

SHARED GLOBAL EXPERIENCES FOR PROTECTION OF BUILT HERITAGE



ICLAFI
INTERNATIONAL COMMITTEE ON LEGAL ADMINISTRATIVE AND FINANCIAL ISSUES



SCHOOL OF PLANNING AND ARCHITECTURE, BHOPAL

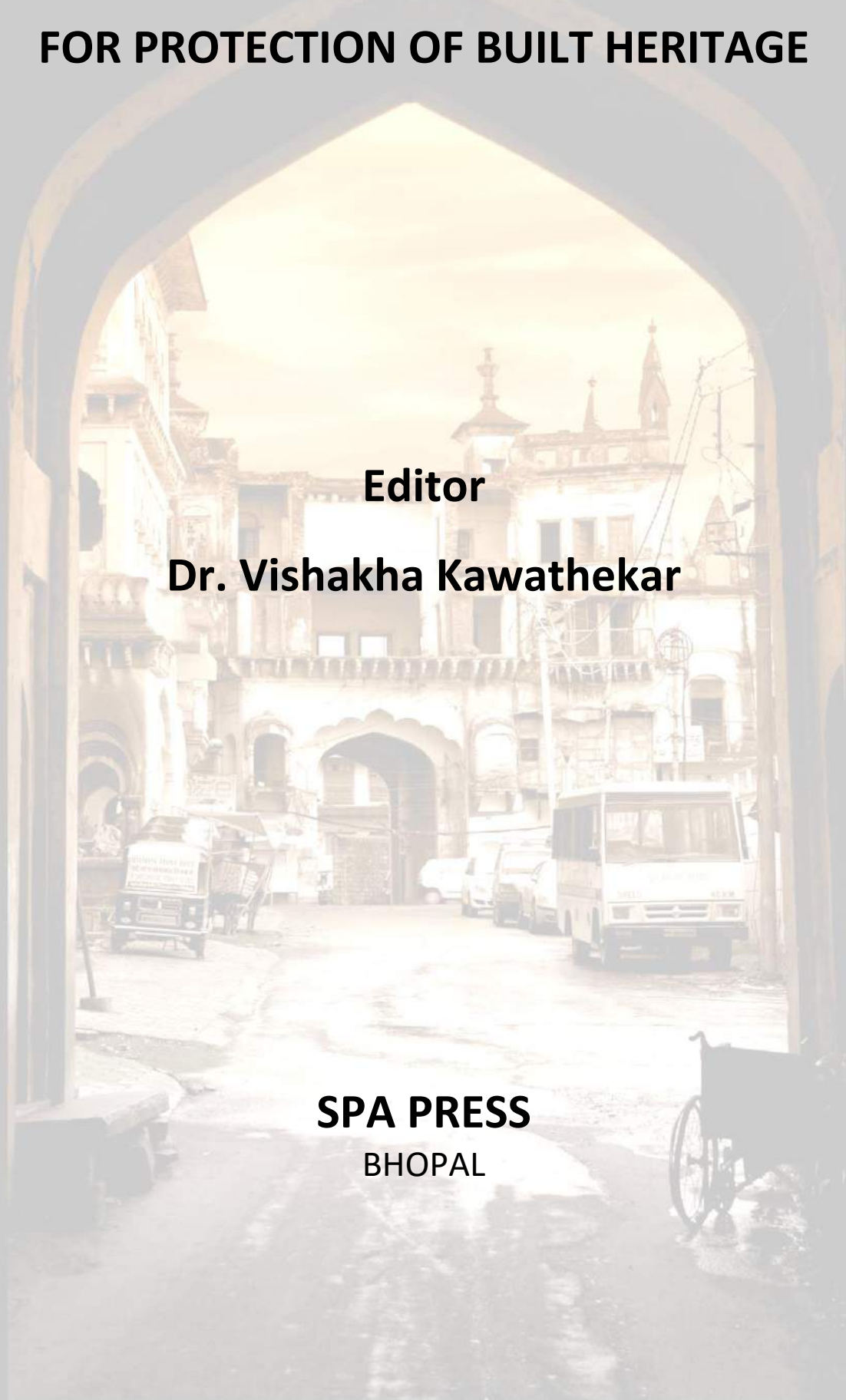
SHARED GLOBAL EXPERIENCES FOR PROTECTION OF BUILT HERITAGE

Editor

Dr. Vishakha Kawathekar

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Preface

Today across the globe, the heritage is looked more as a product of culture, where its interpretations have become an integral part to its conservation. Hence emphasis is laid more on values and significance of this heritage and accordingly they become the heritage of universal, national, regional and local importance. With concepts of Smart / sustainable cities emerging and technology affecting every aspect of our life's, it is extremely critical to understand the meaning heritage has in present society as they are subjected to potential threats like rapid urban growth, large scale industries, growing land prices, encroachments and organizational apathy.

This publication documents the legal provisions of protection of heritage across the globe. There has been considerable published resources which deliberate upon the various aspects of heritage protection including management and maintenance. However, a need of source book is always felt not only by heritage professionals but also by lawyers practicing heritage law, conservation educators etc. to understand and learn through experiences on the legal aspects of protection of heritage not only in their own country but also across the globe.

The present compilation is aimed at sharing global experiences for identification, study and solution of legal, administrative and financial issues in connection with the protection, maintenance and conservation of built heritage. This compilation is an interesting mix of perspectives from legal, philosophical, financial and administrative aspects of heritage protection. Every paper highlights the implementation realities of heritage protection. The gamut so required for understanding the effectiveness of the holistic protection of heritage across globe.

The various experiences are organized in two sections, section one is international which has experiences shared by ICLAFI members from Israel, Estonia, Slovenia, Argentina, Turkey, Germany, Poland, Sri Lanka, Sweden and Philippine. The section two focuses on India and various facets of legal aspects of heritage protection in India.

The Context

This book is a result of documentation and willingness of authors to contribute papers in the International workshop and Committee meeting of ICLAFI (International Committee of Legal, Administrative and Financial Issues) ICOMOS along with ICOMOS, India in 2015 organized by School of Planning and Architecture, Bhopal with partnership the of ICOMOS India, Archaeological Survey of India and School of Planning and Architecture, Delhi from August 19 to 23, 2015. The theme of the workshop was "Legal and Administrative framework for protection of heritage". The conference aimed to create environments for international cooperation for identification, study and solution of legal, administrative and financial issues in connection with the protection, maintenance and conservation of built heritage.

The day early to the workshop 19 August 2015, the international delegates visited the world heritage site of Sanchi. They were guided on site by officers from Archaeological Survey of India, Bhopal Circle and resource persons from SPA Bhopal.

The first day of the International Meeting and Conference of ICLAFI (International Committee for Legal, Administrative and Financial Issues) commenced at Seminar hall of School of Planning and Architecture, Bhopal. The inaugural ceremony started with welcome of all the delegates and speakers from across the globe and the country. Students from other colleges viz. School of Planning and Architecture, Delhi; and Sinhgad College of Architecture, Pune also attended the event. The speakers on the occasion were Anshu Vaish, the chief guest with experience of been the Director General of Archaeological Survey of India, Gideon Koren; President of ICLAFI, Gurmeet Rai, Vice President, ICOMOS India, Prof Ajay Khare, Dean (Academic affairs), SPA Bhopal along with the convener Dr. Vishakha Kawathekar.

The inaugural session was followed by the first session chaired by Prof. Ajay Khare. The special guests of the day were Mr. Gideon Koren legal advisor for the society for the preservation of Israel heritage sites, introduced the participants to various aspects of the legal issues with the present-day context of the cultural heritage protection in Israel followed by Prof. Nalini Thakur; Dean of SPA Delhi, discussing the old knowledge systems and jurisprudence for responsible protection and management of the living heritage of the country. Dr. Vishakha Kawathekar further spoke on the legal framework for heritage protection issues in India.

The speakers in the second and third sessions acquainted the audience to practical examples from their own country viz. Mr Tamer Gok from Turkey, Dr Werner Von Trutzschler from Germany; Secretary general of German national committee of ICOMOS, Thomas Adlercreutz from Member of cultural law committee of the international Law Association, Sweden, Prashantha B.

Mandawala ; Professor of Archaeology from Sri Lanka and Jelka Pirkovic from Slovenia; respectively, about how the legal issues are knead down in the context of the built heritage and ground zero possible realities and the feasible solutions to the same. Nin Sinha from India through his presentation spoke about conflict resolution and heritage management in India. Session II and session III were chaired by Rin Alatalu and Gideon Koren respectively.

The second day of the International Conference commenced with the fourth session chaired by Prof Nalini Thakur. The first speaker for the day being Mr. Kowalski Wojciech spoke about the legal framework of the protection of monuments under the Polish Law. The Global case studies in the sessions for the day included the speakers of Ms Rin Alatalu from Estonia, Ms. Maria Marta Rae from Argentina and Lucille Karen Malilong Isberto (Kay) from Philippines respectively. The conference noted the practical issues and challenges being faced in the present-day context in India with case studies of Maharashtra and Delhi, as discussed by experts Prof Vaishali Latkar from Sinhgad College, Pune and Prof Nisar Khan from Delhi respectively.

The final session was chaired by Dr. Vishakha Kawathekar. Mr. Andrew Pots; Executive director of U.S/ICOMOS discussed the legal and administrative framework for protection of heritage, with examples from the United States. Dr. Izhar Hashmi and Rajkumar Patel, officers from Archaeological Monuments of the Bhopal Circle shared their experiences about challenges of protection of Built heritage. The second day of the ICLAFI conference concluded with a vote of thanks by Dr. Vishakha Kawathekar, convener of the conference.

On 22nd August, 2015 the international delegates, participants, students and faculty from School of Planning and Architecture, Delhi; Sinhgad College of Architecture, Pune and School of Planning and Architecture, Bhopal explored the historical layers of Bhopal through heritage walks.

The morning session started with the exploration of Islamnagar, the city established by Dost Mohammad Khan who founded the state of Bhopal in Madhya Pradesh. Followed by a lunch at Gauhar Mahal, the delegates visited Iqbal Maidan, Taj ul Masajid, Benazir Palace and the Taj Mahal Palace.

On the conclusive day of the conference the experts were taken to the site visit of World Heritage Site of Rock painting at Bhimbetka and visit to Ashapuri, Dist. Raisen, Madhya Pradesh.

It was an opportunity to bring national and international heritage experts, professionals and students to share, learn and discuss further possibilities and solutions related to the legal and management issues which are a threat to our heritage.

Acknowledgements

Neither this workshop nor publication was feasible without the help of many individuals and institutions. The institutes that need to mention are ICLAFI ICOMOS, Archaeological Survey of India, ICOMOS India, SPA Bhopal, SPA Delhi and RGPV Bhopal. The individuals who contributed immensely through their support and encouragement are Gideon Koren and Rin Alatalu from ICLAFI, S B Ota and Zulfikar Ali from ASI, Rohit Jigyasu and Nin Sinha from ICOMOS India, Chetan Vaidya and Priyaleen Singh from SPA Delhi. SPA Bhopal vision, Ajay Khare, Sanjeev Singh, Rajesh Moza, entire faculty, staff, all students of Master programme in Architecture, Conservation contributed to the success. My fellow coordinators Ramesh Bhole, Nitin Sinha, V Balaji and Ankit Kumar need a special mention.

I am sincerely thankful to all and hope such successful endeavors continue....

For a happy and sustainable future with our past, we all strive together.

Dr. Vishakha Kawathekar

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SECTION- I

INTERNATIONAL



About:

Gideon Koren is the founding partner of Gideon Koren & Co. Law offices in Jerusalem and Tel Aviv. Gideon teaches various aspects of heritage preservation laws as an adjunct teacher/lecturer at the Hebrew University Faculty of Law and the Faculty of Social Sciences, Tel-Aviv University, Bezalel Academy and the Israeli Technicon. In 1997 Gideon was one of the founding members of ICLAFI (ICOMOS International Scientific Committee on Legal, Administrative and Financial Issues). Since 2008 – Gideon is a member of the ICOMOS International Executive Committee and since 2011 serves as ICOMOS International Vice President.

Cultural Heritage Protection in Israel - Centralization Vs Decentralization of the Heritage Management

Gideon Koren

Abstract:

This paper discusses the statutory institutions for heritage protection in Israel and the legal framework proposed by them. It highlights how the lack of a clear definition is causing issues and risking the protection of cultural heritage in Israel and debates the role of centralization and decentralization of heritage management systems in important decision makings regarding the protection of heritage in Israel.

Keywords:

Antiquities, Heritage protection, National Parks, Modern Sites

1.0 Introduction

Comparably to its small size, Israel has numerous Cultural Heritage sites holy to the main three religions present in the country: Christian, Islam and Judaism. Al Aqsa Mosque, Baha'i Holy Places, Caesarea, Cave of the Patriarchs, Church of the Holy Sepulchre, Crusader Fortresses, Masada, Mosque of Omar and Western Wall are some of the world famous heritage sites in Israel. Unfortunately, Israel lacks a central Authority responsible for the management and preservation of these heritage sites. However, the law recognizes some sites, mainly archaeological ones. "The Israel Antiquities Authority", appointed by the law for the preservation and conservation of archaeological heritage sites, was founded in 1989. The Antiquities Authority is limited in its power only to heritage sites existing prior to 1700 A.D. While more "modern" sites can only be protected according to the zoning and planning laws, under the responsibility of local Preservation Committees subordinate to the municipalities in which the Heritage sites are located.

As we will demonstrate in this article, the zoning and planning laws do not provide clear criteria, on which heritage sites will be benefited of preservation rights by virtue of the law, nor does the law determine the nature and the scope of preservation and protection that heritage sites will have. Lack of clear definition is causing many issues and is risking the protection of cultural heritage in Israel.

2.0 The Israel Antiquities Authority

The "Israel Antiquities Authority" is acting under the authority of two Laws:

2.1 The Antiquities law, 1978 (hereinafter "the Antiquities law"), regarding the practical aspects involved with antiquities, such as: the rights and duties of those who discover antiquities on their property, the various limitations on any transfer of or commerce with antiquities, and other authorities and duties of Israel regarding antiquities.

2.2 Israel Antiquities Authority Law, 1989 establishing the functions and the authority of a national statutory institution in charge of the protection of antiquities and antiquities sites in Israel.

The Antiquities Law defines "Antique" as an asset that was made by human before 1700 A.D, an asset that was made by human after 1700 A.D which has historic value and was declared as antique by the Minister of Education, Culture and Sports; also the Zoologist and botanical remnants, from before 1300 A.D.

The protection and care that the law provides to antiquities is absolute to such extent that according to the antiquities Law, any antique that is discovered during an excavation shall be considered a State property.

The Antiquities Authority has been provided with unprecedented powers as part of its duty to protect antiquities, and may prevail over some fundamental civil rights such as personal property rights and freedom of occupation right.

For example, the Antiquities Authority is authorized to expropriate any land for excavation, preservation or research purposes. Furthermore, if a person discovers an antique, while performing construction activities on his land, he must notify the authority and stop the activities, unless the authority has given him permission to continue the activities. The authority is entitled to order such person to stop the activities completely or to determine the terms for continuing the activities. A person who suffers a loss due to such order or terms set forth by the authority is entitled for compensation. Additionally, in some cases, the director of the authority is authorized to demand from any person to deliver his antique to the authority, for a limited period. Moreover, in a situation when an antique is defined as a "National Antique", the director is authorized to demand that the antique will be sold to the State, regardless of the owner's other wishes or rights in the matter.

Furthermore, the authority is authorized to declare any place as an "Antique Site" and such declaration means that this place is under stringent restrictions and prohibitions of any construction activities, such as building, paving, installing infrastructure, drilling, planting, mining or burial. This is not an exhaustive list as the Minister of Education, Culture and Sports is entitled to demand that his approval must be obtained before any other action pertaining to the site is started. The statutory framework governing the antiquities field, as mentioned above, includes many additional areas, such as issuing of licenses for excavations, regulation regarding antiquities collectors, trading with antiquities and aspects of transfer of antiquities into and out of Israel.

Three possibilities exist in the requisition of antiquities: Full Expropriation, Transfer of the formal ownership to the state, while the owner can still use the land in which the antiquity was found and the separation in the ownership of the antique and the modern land layers. Such an arrangement took place in the city of Acre. In the underground of the city, there exists a historic Crusader's Town established in 1104. The city that exists on the ground on the other hand, was founded in 1799. In this case only the underground city was taken over by the state.

3.0 Parallel Statutory Institutions Providing Protections to Cultural Heritage

Additionally, there another national statutory institution exists in Israel called "The Israel Nature and Parks Authority" [Established by The National Parks, Nature Reserve, National Sites and Commemoration Sites Law (1998)] which is the competent authority for, among other things, the preservation of heritage, nature reserves and national parks.

The Israel Nature and Parks Authority, is responsible for the preservation of national heritage (amongst other tasks). However, the aforementioned law does not define which site will be protected under the Law. The Minister of Internal Affairs, under Section 38 of this law, has the authority to conserve a building or group of buildings, as well as their immediate surroundings, if they have historical or national importance. The power to determine which building or group of buildings will benefit from protection is given to the Minister of Internal Affairs.

4.0 The Protection of the relatively Modern Cultural Heritage

In view of all the aforementioned, it seems that the statutory framework in Israel does not properly cover, and is lacking any real protection of, antiquities sites. The Laws' protection is given only to specific sites which fall into the Laws' limited definitions. Other sites of archaeological or historical importance are not entitled to any protection and there is no statutory framework or national institution regulating protection of such sites, even if they are of the kind of archaeological heritage or preservation sites.

In light of the extent of protection given to antiquities, national parks and nature reserve, there is a real urge to provide adequate protection also to the archaeological and heritage sites, currently excluded from an appropriate protection by the relevant laws.

To compensate for the lack of protection for the "modern sites", the state created a configuration of heritage protection through the Building and Planning Committees. Built heritage other than antiquities are governed by the Planning and Building Law (1965); which establishes national, district and local planning committees, that are empowered to adopt zoning and building plans at their various levels. Section 61 of this law determines the objectives of the zoning and building plans. Clause 61(3) determines one of the said objectives as conservation of any building ... which has architectural, historical, archaeological or other importance.

For many years, the law did not provide an explicit definition of which sites or buildings will be protected, neither how will they be preserved and protected. In 1991 the fourth appendix to the Planning and Building Law was added. Section 76(a) determines that the fourth appendix governs conservation plans. Section 1 of the fourth appendix defines a conservation site as "a building or group of buildings, as well as their immediate surroundings that the planning and building committee find to have historical, national, architectural or archaeological importance". It should be noted that, under the fourth appendix to the Planning and Building law (1965), a local planning and building committee is obligated to establish a preservation sub-committee that is required, among other duties, to advise on issues related to conservation.

5.0 The Lack of a clear definition of the protected sites' scope or the way they shall be protected is causing many issues:

5.1 The failure in the establishment of Conservation Committees and the composition of the existing preservation Committees.

The law determines that every local protection committee has to establish a list of Cultural Heritage needing protection within two years since the Committee's establishment. However, the Law did not determine deadlines for the foundation of such Committees, and many municipalities have not created protection Committees yet. In addition, the existing Protection Committees did not provide exhaustive lists of Heritage Sites to protect and did not accomplish the goals of their foundation. The Committees did not often include professional Heritage conservation experts and was usually a Sub-Committee of the Building and Planning Local Committee.

- 5.2 Conflict of interest:** The necessity to compensate property owners who are damaged created an inbuilt conflict of interests. This conflict of interests was also caused by the fact that the protection committees are De Facto subordinate to the Planning and Building Local Committees, whose interest are often contrary to interest of the protection purposes.
- 5.3 Usage of the Heritage Sites:** While the main heritage sites under the responsibility of the Antiquities Authority are turned into National parks, heritage sites under the supervision of municipalities remain in many cases in private hands.
- 5.4 Heritage Protection Policies:** The heritage preservation policy varies from one municipality to another. An example for such differences in the heritage management is the city of Tel-Aviv in Comparison to the City of Jerusalem. While in Tel-Aviv, Neve-Zedek, a neighbourhood founded in 1887, is surrounded by skyscrapers. In Jerusalem a local Law protects the German Colony, founded by the Templers in 1873.
- 6.0 The process of determining the criteria**

As mentioned above, the main set of criteria is in the Israel Antiquities Authority Law (1978) determined by the legislature, and can only be changed by it.

As for built heritage not discussed in any law, the Minister of Education, Culture and Sport, the Minister of Internal affairs, or national, district and local planning and building committees can set their own criteria as to which built heritage should be conserved. The processes and considerations differ from one another and rely on their personal judgments. For example, last year the local planning and building committee for Tel-Aviv approved the "White City" conservation plan, in which 1300 buildings with historical or architectural value are to be conserved. The local planning and building committee for Tel-Aviv, set different criteria for buildings to determine which buildings are to be ignored, which buildings are to be conserved and which buildings are subject to strict conservation. It is important to mention that this "White City" conservation plan and its criteria have no obligatory effect on other planning and building committees, which may set a whole different set of criteria.

A good example of the Building and Planning Law failure in the determination of criteria is "Gymnasium Herzliya". The "Gymnasium Herzliya" school was founded in 1905 in Ottoman-controlled Jaffa. The cornerstone-laying for the school's new building on Herzl Street in Tel Aviv took place on July 28, 1909. Gymnasium Herzliya was the country's first Hebrew high school. The building was designed by Joseph Barsky, inspired by descriptions of Solomon's Temple.

The building on Herzl Street was a major Tel Aviv landmark until 1962, when the site was razed for the construction of the Shalom Meir Tower. The destruction of the building sparked widespread recognition of the importance of conserving historical landmarks.

7.0 The Society for Preservation of Israel: Heritage Sites

The Society for Preservation of Israel Heritage Sites, a private NGO was founded in 1984 partly in response to the fate of the Herzliya Hebrew High School.

In order to solve the aforementioned issues, Society for preservation, attempted to promote a law that will determine how to preserve heritage sites. Unfortunately, this attempt failed for the time being. In 2009 the government began a large reform in the “Planning and building Law, 1965”. The purposes of the reform are mainly to simplify the procedures of construction and development permit granting. Regrettably, this reform is risking worsening the situation in the following issues:

- 7.1** Cancellation of the preservation committees and strengthening the position of local planning committees
- 7.2** Amendments in the compensation procedures
- 7.3** Lack of professional supervision

The Preservation Council is still trying to amend this reform but till now, these attempts did not result in desired outcomes.

8.0 Conclusion

Controversy exists regarding the centralization or decentralization of the heritage management. While some opinions believe that a rigid definition of the protected heritage, similar to the criteria determined in the Antiquities law is advantageous, as it is limiting the judgement of external bodies, which might be driven by extraneous considerations, other opinions consider that a professional bodies’ freedom of judgement will be more favourable for the control over heritage management. Similar to the regulation presently existing by virtue of the Planning and Building Law, where district and local planning and building committees can set their own criteria as to which built heritage should be conserved. In such structure, professional bodies will be able to select which buildings deserve cultural Heritage Protection and on which building it would be superfluous.

In any case, no one disputes that the current configuration is not providing sufficient protection to major Cultural Heritage Sites, and there is still an urgent necessity to create a structure that will solve the existing aforementioned issues.

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Antiquities Law of the State of Israel (1978)



Effective Enforcement of Legislation

Dr. Riin Alatalu

About:

Riin Alatalu is presently Head of division at Tallinn Culture and Heritage Department. She works with the Ministry of Culture as programme coordinator, where her mission is to lead the European Economic Area manor schools program. Previously Alatalu has worked in various positions in the National Heritage Board.

Abstract

The current paper discusses the need to regulate and explains the aim of regulations with examples from Estonia. The paper argues that the problem lies in missing or poor explanation of the meaning and aim of legislation

.

Keywords

Legislation, Awareness Raising, 20th Century Heritage, Rural Heritage

1.0 Introduction

Protection of heritage is a multifaceted matter. On one side the target is to safeguard the best examples of human creativity and the valuable traditions. We preserve not just history, but literally the roots of mankind. The human values are in continuous development and changes take place with every new generation. To follow the traces of history a choice of its elements should be preserved for contemporary and future generations. Estonian researcher Priit-Kalev Parts has defined that the list of monuments is a political choice of what we declare important from our past (Parts, 2007). Thus various registers of monuments reflect not only the ideology of heritage protection, but also its position in the community and in current political situation. Choices on what to preserve are made on local, national and global level as the broader influence of one or the other phenomenon may be different, but all these choices are precious to some groups of the society.

However, these choices are usually not only legitimized, but also made by specialists. Thus it depends on the qualification and knowledge, but even more on the availability and mandates of heritage specialists. Many protected monuments, like prehistoric sites, places of worship or the monuments of rulers etc. represent public values. But a considerable number of protected sites have undergone a value creation process before the community accepts them as a common value. These are very often the monuments of daily life and history of the community, often representing the identity of certain social groups.

But not only the list of monuments is a compulsory decree of protection made by the specialist and authorities, but the overall intercourse between people and monuments are defined by legislation. There is a whole set of obligations set around the eternal life cycle of a monument. Only the fact, that heritage is something that is protected by law, creates a gap between individuals and heritage and the procedure of protection is seen as something forced and involuntary. Of course, this varies in different cultures. This argument is confirmed in all presentations from a dozen countries presented on the International Conference of ICLAFI in School of Planning and Architecture in Bhopal in 2015. Often the problem lies in missing or poor explanation of the meaning and the aim of legislation. It is important to create understanding, to define heritage as common richness in cultural, economic and social sense and thus to reduce the resistance to the regulations. The easiest way is to involve communities not only in awareness rising, but also the process of creation of rules and the supervision of activities. In the following part some examples on different ways of awareness rising in Estonia will be discussed.

2.0 Inclusive List of Monuments

Although the first attempts to create a list of archaeological sites and the resolutions to protect Tallinn Old Town were enforced already at the end of the 19th century, the compilation of official list of monuments in Estonia started only in the 1920s. It consisted mainly of archaeological and medieval heritage. During the century newer layers from 18th and 19th, and even early 20th century and new types of heritage have been added. By the turn of millennium, the list was still relatively biased. This argument has many layers to be discussed below.

For example, from total of ca 5300 monuments of architecture more than 2000 represent the culture and economy of manors, while only 300 stand for the legacy of peasants. Of course, the manors of the nobility were the carriers of political, economic and cultural life and they have strongly influenced the development of physical environment. Estonia was Christianized and conquered in the beginning of 13th century and till the formation of the Republic of Estonia in 1918 it has been under the rule of German Order, Kingdom of Denmark, Kingdom of Sweden, and Russian Empire. Despite who has been the supreme power, the land itself was for centuries divided between ca 200 noble families who by rule were not Estonians. Native population was forced into serfdom, which was officially abolished only by the acts from 1816 and 1819, but in reality, the situation changed in favour of the Estonians only in mid-19th century when the peasants got the right of ownership of the land. The rank system was finally abolished only in 1920. So, the national register of monuments represents almost the entire preserved legacy of the former nobility, but overlooks the heritage of Estonians who were forced into lower rank.

Although some of the manors were listed already in 1930s, still the massive protection of them started only in late 1970s when there was a solid time distance with the era of serfdom. Even more – the listing of architecturally outstanding heritage of bygone times had a hidden background of resistance to the Soviet occupation and its official narrative of history. In retrospective we can say that the process started too late and many of the manors were gone by that time.

Still the above mentioned 300 farmhouses, cattle sheds, windmills, rural inns etc. were almost all listed during the Soviet occupation, in addition to their ethnographic value, a label of legacy of the “working class” was added. After the rediscovery of manors, listing of ethnographic heritage stopped almost completely and little was done to promote its importance. Only the recent years have shown some change in the priorities.

Estonia restored its independence in 1991 and the society immediately became very neglectful of the legacy from the period of Soviet occupation, although hundreds of masterpieces of architecture had been designed by talented Estonian architects. Too many of them fell in disrepair.

In 2007 the Ministry of Culture and the National Heritage Board initiated a programme “Mapping and analysing valuable 20th-century architecture in Estonia” in order to make an inventory and survey the preserved valuable heritage in the whole country. The programme focused on the period from 1870 to 1991 i.e. from the year of establishment of railway system as the cornerstone of industrial development to the restoration of independence in Estonia. More than 2000 sites that represent different phenomena of development in society including the period of Soviet occupation were studied and more than 600 were thoroughly documented and nominated for inscription in the national register of monuments (Lankots, Välja 2013). The importance of this study lies in its inclusive character as it took note from very different issues in the development of society from rural buildings to military and industrial heritage. This study has helped to balance the list of protected sites so that it covers different political, social and cultural aspects of the past.

3.0 Milieu Protection areas as Neighbour watch areas

There are 11 urban conservation areas in Estonia in towns with medieval city structure including one established in 18th century. Although the areas are homogenous, the individual buildings inside represent different time and style periods. Thus, the statutes of the conservation areas state overall principles and direct restrictions given plot by plot.

In addition to these areas there are dozens of milieu protection areas adopted since 1996. These cover historic suburbs mostly created and developed from the end of 19th century and onwards, the newest ones comprise of housing from 1970s. The protection of these is regulated by the Planning Act and not on national, but municipal level. The original idea was not to preserve each and every house but to follow the smooth Nordic democratic example protecting the structure of the areas, scale of buildings, greenery, etc. But by that time many valuable houses had been destroyed in course of the development fever following the Property Reform after the restoration of independent state. Following the negative effect of plot-based development, the inventories were carried out to map the existing buildings and identify their values. Based on the inventories, protective rules were created and as generally the buildings inside whole quarters are rather similar, the restrictions on materials, designs etc. are pretty precise. As the areas were designed by master plans, the process had to involve also public discussion. In the beginning of the process there was a notable opposition, but consistent awareness raising campaign in media, meetings with local inhabitants and organizing excursions to point out the values has had significant results. This has positively affected the real estate price, and it has become very popular to live in a milieu area. Also the understanding that in dense city structure every development in the neighbourhood has an effect on the real estate value of the whole area has created common interests. The inhabitants have formed numerous local societies that discuss and improve the life quality in these areas and interfere in case of unwanted developments. The “neighbour watch” has proved to be not just remarkable community involvement but also a very effective tool in heritage protection (Alatalu 2013).

4.0 Programme for Owners of Rural Buildings in Estonia

The Estonian Open Air Museum (established in 1957) preserves and presents a collection of farm buildings from all over the country. In 2008 the Museum accepted the proposal of Ministry of Culture to carry out a programme of rural architecture and landscape. The most visible outcome is the programme for training the owners of heritage rural buildings throughout the country. As the majority of Estonian farm architecture is not listed, their preservation remains solely the responsibility of the owners and National Heritage Board and has limited options to interfere. The Museum has effectively contributed to the awareness raising, explaining and promoting the values of the ethnographic architecture. But awareness raising itself is not enough. People in rural areas are in need of practical advice, with examples to follow, in how to renovate their old rural properties. The Museum has organised special courses. Majority of the courses are based on case studies that take place in different places all around Estonia. Meeting *in situ* the potential clients creates friendly climate and heritage friendly attitude. Participants learn by doing, and thus contribute with their work to the preservation and future maintenance of the vernacular architecture. By 2015 the Museum has

organised more than 80 practical training courses for over 1700 participants. The popularity and outcome has been so notable that in 2015 the programme was granted with Europa Nostra Grand Prix – the highest heritage award in Europe promoting the initiative as an example to the rest of Europe. (Europa Nostra, 2015)

5.0 Conclusion

Cultural heritage is a common value, richness of the society. A number of laws and regulations have been put in place to regulate the safekeeping of protected monuments, but still it faces daily mistreat and disrespect. Very often the mistreat origins from the owner or the closer community. History has proven that regulations are not effective when community has not accepted them as shared responsibility. Thus the authorities have to be creative how to explain the aim of the regulations and create a shared responsibility. This sounds idealistic, but in most of the cases the effort made to explain the broader goal and aim of the regulations help to create a dialogue and broaden the circle of safekeepers of heritage.

End notes:

Tallinn Old Town is a World Heritage Site since 1997

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Concept of cultural heritage protection and management in Slovenia

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About:

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Abstract

The paper presents here, various aspects of heritage management system in Slovenia including levels of statutory protection as defined by the Heritage Protection Act and various spatial planning tools. It considers Cultural Heritage Information System as an important tool for heritage identification and interpretation. By analysing the weak areas of current heritage management in Slovenia, it also suggests methods to tackle each.

Keywords

Monument Protection, Heritage Information System, Heritage Rights

1.0 Introduction

Protection of monuments (later also of heritage) is a concept that has been developed since the beginning of state-organised care for the physical remnants of the past – for many European countries it started in the nineteenth century. The concept was later codified in many international (UNESCO, ICOMOS) covenants and standards, especially in the UNESCO World Heritage Convention. Heritage management, on the contrary, is a comparatively new concept, first developed in the United States, Canada and Australia where it was codified in the so called Burra Charter in 1979 with later amendments. From the 90s on, the need of widening the scope of heritage protection to the broader environment on one hand, and at the other hand to ensure its sustainable use and development led to the introduction of the management issues at the international level and consequently also into heritage policies at national levels. Nowadays, heritage management has a double meaning: firstly, it denotes practical activities necessary for enhancing heritage values, in particular organisation of maintenance, use, accessibility, public presentation, and monitoring of physical condition of a given heritage property or site. Secondly, it denotes national measures that enable and sustain heritage protection in general. In this respect, the term management system is also used. In this paper, the discussion is about management system and not about management of specific heritage properties.

2.0 Slovenia and its heritage

Slovenia is an EU country and is located in the Central Europe bordering Italy in the West, Austria in the North, Hungary in the East and Croatia in the South. Slovenia is also a Mediterranean country though our Mediterranean coast is quite short. The majority of the country's surface (60%) is covered with forest. Geographically, one part of Slovenia belongs to the Alps, the other to the Pannonia plane. In between, there is the so called Karst which is basically a limestone plateau which gives this type of landscape a characteristic topography and hydrology with many underground waters, caves, lakes etc. Slovenia has two million inhabitants and around twenty thousand square kilometres.

Slovenia is rich in heritage, there are thirty thousand registered heritage (immovable) properties and statistically, there is one and a half heritage property on each square kilometre. Of course, because of prevalent forested and alpine landscape, the actual density of heritage in populated areas, especially in towns and villages is much higher. Half of the immovable heritage properties are secular architectural objects, twenty five percent are religious buildings, fifteen percent are protected areas such as historic towns or villages and cultural or historic landscape, and ten percent are archaeological sites of different size and periods.

From the Middle Ages on, the provinces with Slovene population were ruled by the Austrian Monarchy (from 1867 to 1918 by the Austro-Hungarian Monarchy). Monument protection on the Slovene territory started in the middle of the nineteenth century. At that time, the word "heritage" was not used in the modern sense; the term "monument" was used instead. In the period of 1850 to 1913, monument preservation was organised in the so called Central Monument Commission in Vienna while the fieldwork was provided by honorary conservators. Just before the outbreak of the Great War, the Central Commission was re-organised and

Provincial Monument Protection Offices established. In 1913, such an office was established in Ljubljana, the then capital of the province Carniola. The wartime prevented Austrian authorities to push through the adoption of a Monument Protection Act (Austria adopted it in only in 1923). In the between wars period when the majority of Slovene territory came under the rule of the Kingdom of Serbs, Croats and Slovenes (later called the Kingdom of Yugoslavia), political powers in the Yugoslav capital blocked every effort of adopting a protection law. It was only in 1945 the first Monument Protection Act came into force. The protection system was gradually being developed but, of course, bearing all traces of socialist political system which totally denied private ownership rights and where certain categories of heritage were doomed to be physically eradicated or left to oblivion and neglect. The latest version of socialist piece of legislation was adopted in 1981 and it introduced some positive ideas. For instance, it introduced the term “heritage” in our protection practice covering all categories of heritage, also natural and movable ones, it prescribed legal basis for the organisation of immovable protection service (in the form of central institute for the protection of natural and cultural heritage as a governmental body and regional institutes established by associations of local authorities), national and municipal museums and archives. On the other hand, the law brought about development with negative consequences. First of all, due to the lack of coherent coordination between national and regional institutes each party developed its own bulk of conservation practice (and that fact became quite annoying) and also blocked the creation of an aggregated heritage inventory. Another difficulty resulted from the definition of cultural heritage categories which followed the division of humanistic sciences interested in heritage research. So, cultural heritage was divided into art historical- and architectural heritage, ethnographical heritage, historical heritage, archaeological heritage, landscape-architectural heritage and technical heritage. The division not only created ambiguities in border-cases where it was hard to define which science has the major interest in dealing with a specific heritage property. What was even worse, it inhibited the development of an interdisciplinary team work and consequently, the emergence of a modern heritage profession.

Immediately after Slovenia became independent in 1991, serious work started for the elaboration of new heritage protection law. Unfortunately, political development prevented the work to be completed in the following years. Instead, with the Government re-organisation in 1995, the nature conservation service came under the responsibility of another ministry which practically brought about the separation of the protection of natural and cultural heritage. In this vein, the Parliament adopted two separate pieces of legislation, the Nature Conservation Act and the Cultural Heritage Protection Act in 1999. The only positive side of latter was the merger of regional heritage protection institutes into one uniform organisation, the nowadays Institute for the Protection of Cultural Heritage of Slovenia - IPCHS, while the former central heritage protection organisation came under the Ministry of culture as one of its administrative units (now under the name of Directorate for Cultural Heritage). The major deficiency of the 1999 Act was that it failed to define provisions for the implementation of already ratified European Convention on the Protection of Archaeological Heritage (revised). In the following years, Slovenia also ratified other international heritage conventions which needed to be integrated into our legal system.

3.0 Management system as defined by the Cultural Heritage Protection Act 2008

In 2005 the work on a new heritage protection act started with broad consultation activities and, in its final stage, hard negotiation with relevant ministries and parties interested in one way or another in heritage issues. A lot of compromises needed to be negotiated and some proposals were finally totally overruled (in the first place, the proposal for the introduction of a special financial scheme intended to complement state and municipal restoration subsidies). But on the whole, the Heritage Protection Act (2008), accessible on the webpage

http://www.arhiv.mk.gov.si/fileadmin/mk.gov.si/pageuploads/min_eng/legislation/CHPA.pdf provided a relatively stable basis for the implementation of an up-to-date heritage protection in our country. In the following years, it underwent several smaller revisions which were on one hand necessary from the point of view of solving practical implementation concerns and on the other hand, also deriving from the fact that the ministry responsible for heritage protection (the Ministry of Culture) due to general budgetary restrictions succeeded to convince the Parliament to restrict some special financial measures for heritage owners stipulated by the Cultural Protection Act – for example the funding of preliminary archaeological research in cases when a natural person wishes to build a dwelling for his own needs. The amendment has restricted this clause in the way that candidates have to make application to a public tender where the available funds are restricted in advance. On the other side, the eligibility of persons applying to tenders has been enlarged to include local authorities wishing to construct communal amenities. In this way, the initial intention of supporting individuals in complying with heritage protection measures was practically diluted.

The intention to overcome the division of heritage into “scientific” categories led to the solution where only basic heritage categories have been defined by the 2008 law. In defining these categories, international conventions were followed to the maximal possible degree bearing in mind that particular conventions do not define heritage categories in a coherent way (which is explainable from the point of view of the period when a convention was elaborated, specific needs and scopes of the convention and the like). Definition of cultural heritage categories used in 2008 Heritage Protection Act are as follows: “immovable heritage” are immovable properties or its parts with the value of heritage, entered in the heritage register; “movable heritage” are movable properties or a collection of such properties with the heritage value; and “intangible heritage” are practices, representations, expressions, knowledge, skills, and movable properties and cultural spaces associated therewith (where such heritage is presented or expressed). The law also defines three special categories of immovable heritage, namely settlement areas, cultural landscape and archaeological sites. Architectural heritage is not mentioned per se although there are special provisions which are tailored to the protection of this sub-category of heritage. The more detailed subdivision of heritage categories was left to be defined by a ministerial regulation which was done in 2009.

4.0 Levels of statutory protection (grading)

Whether classification (grading) of cultural heritage is acceptable or not, is an ongoing discussion in professional heritage circles. The public debate before the adoption of the Heritage Protection Act concentrated around two opposite views – the first group favoured the existing grading system that distinguished the following grades: registered heritage,

monuments of local importance and monuments of national importance. The other group argued that the introduction of only one category, namely the monuments of national importance would improve the quality of protection. Their main argument was based on individual cases when local authorities had denied or deferred designation of a monument on their territory. Finally, the reasoning of the first group prevailed and the established grading has remained in force with some fine-tuning that can be used in cases when local authorities are hesitant to introduce monument designation beyond reasonable cause. In this case, the Minister of Culture can temporarily designate a monument for the maximum period of two years giving the property the same level of statutory protection as it would be granted by a permanent designation. Temporary designation can give space and time for a consented dialogue with the local authority in question, for a possible revision or completion of the designation dossier, and if it turns out that the heritage property merits national designation, negotiate it with the Government.

5.0 Protection through planning

Slovene regulations pertaining to spatial planning recognise three types of spatial plans, namely: A National Spatial Plan that covers planning of state infrastructure facilities or another interventions of national importance; a Municipal Spatial Plan that covers the entire territory of a municipality and prescribes urban planning conditions for construction; and a Detailed Municipal Spatial Plan that covers planning of municipal infrastructure facilities or other major spatial interventions. Both planning regulations and Cultural Heritage Protection Act state clearly that heritage is an integral part of spatial planning. Compulsory components of spatial plans defined by Cultural Heritage Protection Act are as follows: monuments (of local and national importance), heritage protection areas, registered archaeological sites and heritage properties already protected by a spatial plan. The Act does not prescribe that additional heritage property not pertaining the above mentioned categories are compulsory elements of spatial plans. This means that planning authorities can take in consideration such heritage as well, only that they are not obliged to do so by law. It depends on how the proposals for protection through planning are convincing and how local authorities understand heritage as a development potential.

When a strategic assessment of environmental impact is prepared it should cover assessment of planned activities on heritage as well. A strategic impact assessment on heritage is also mandatory for interventions in areas without heritage if such interventions could have a direct or indirect impact on nearby heritage properties.

6.0 Shared responsibilities for heritage management

Cultural Heritage Protection Act defines the IPCHS's mission in detail. In short, IPCHS carries out national public service of the protection of immovable heritage and movable and intangible heritage associated therewith, executes projects intended to preserve heritage as an important part of cultural diversity of Slovenia, and activities that contribute to the integration of heritage into contemporary life and awareness-rising about the value of heritage. It also decides in administrative procedures related to heritage protection and carries out archaeological and other research needed for the identification, protection and conservation of heritage. It is a duty in privilege of the IPCHS to prepare the full designation

dossier (proposal) together with identification and assessment of all relevant movable elements that are indispensable part of a heritage complex. On the basis of the assessment, IPCHS gives a proposal about which protection regimes (protective measures) would meet the protection needs. IPCHS also coordinates public consultation and assists local authorities or the Ministry in the process of sectorial coordination and adoption of a designation decree.

It has to be stressed that the most important protection decisions (and a designation is certainly one of them) are adopted by a body of elected representatives following a democratic procedure. The role of the Ministry and IPCHS is to implement the policy of protection (in the case of the Ministry in the first place) and to adopt administrative decision of how general protection measures are to be implemented in specific circumstances. There is a clear division of administrative responsibilities between the Ministry and IPCHS. Not to go into details, let us mention the main complementary responsibilities. The Ministry is responsible for the management of Cultural Heritage Information System with its core part, the Cultural Heritage Register, while IPCHS provides data to be included in the register. The Ministry has an important role in spatial planning since it cooperates with other Governmental sectors and local authorities and monitors if spatial plans integrate heritage concerns in a proper way. IPCHS, on the other side, gives the Ministry necessary information about heritage features and developmental challenges heritage is facing. Documents prepared by IPCHS for the planning process are given to planning authorities in a standard format. The Ministry has the power to monitor the result of planning process as far as cultural heritage is concerned and IPCHS advises the Ministry in this regard. IPCHS has the mandate for issuing administrative acts, most importantly protection conditions and consents for interventions on heritage while the Ministry has the mandate to reverse the consent if an appeal is submitted.

7.0 Cultural Heritage Information System as the main tool for heritage identification and interpretation

The right to use heritage as a source of information and knowledge, to enjoy its values and to contribute towards its enhancement as specified by the Cultural Heritage Protection Act constitutes the starting point for legal provisions pertaining to collecting and disseminating heritage information.

In Slovenia, the basic platform for gathering and managing heritage information is the so called Heritage Register. The work on the Register started in 1991. The main idea about the register was to create a computerized information system built around core data on heritage constituting a kind of heritage identity card. A pilot version of the Register became available in 1995. The register has been regularly up-graded and the main upgrading was the introduction of GIS supported information in 1997 which was at that time an important novelty at European level. In 2002, a web portal was created so that all the information has been even since available online, nowadays using WEB2 technology.

Cultural Heritage Protection Act defines the register as *“an information support to the implementation of heritage protection. The purpose of the register shall also be presentations, research, education, and fostering public awareness of heritage.”*

Introducing a heritage property in the Heritage Register has no legal consequences for its owner or for other stakeholders. Legal consequences arise only later when an immovable heritage property is integrated into a spatial plan or is designated a monument by a designation decree adopted by the Government or the competent local authority.

The information system is organised in three layers. The first layer contains core data, the second the protection data and the third presentation data on heritage. The core data or the heritage identity card gives short and uniform description of definite heritage properties including geocoding information. The second layer contains protection data, among others, information on protection guidelines if a property is protected through planning (category of heritage) or on legal regimes if a property is designated a monument of local or national importance. The system allows users to directly consult the manual entry explaining protection guidelines for a specific heritage property or the official gazette where the designation decree for a specific monument is published in. The third layer contains presentation data in the form of e-content (text, images, videos, 3D etc.) visually describing specific heritage properties. The system conforms to the relevant standards data. E-content is linked to and is directly visible on Europeana and other portals.

In order to facilitate the access to heritage information system and to make it more user-friendly, we have developed three web portals for three groups of customers. The first portal is adjusted to professional retrieval of information on an interactive map (<http://giskd.situla.org/>). The second portal was developed after the adoption of the Cultural Heritage Protection Act when the internet GIS-version of the information system was upgraded with data on protection guidelines and legal regimes of protection, the so-called eVRD in order to meet the needs of spatial planning and other administrative procedures (<http://evrd.situla.org/>). The third web portal was developed recently to facilitate the access of general public and to meet tourism, education, research and similar needs (<http://www.eheritage.si/apl/>). It enables access to scanned articles, conservation reports and other documents, photographs, and 3D models. Users can browse through interactive maps, plan itineraries for visiting heritage, browse specific publications and conservation reports that have been digitalised and put online. Full text search is available for the majority of articles. The whole system is for the time being only in the Slovenian language and English linguistic version would be of great help for international recognition of our heritage.

8.0 Conclusion

We have discussed only limited number aspects of heritage management system in Slovenia as defined by the Heritage Protection Act. One should also mention that the Act gives legal basis for other dimensions of heritage management such as rights and obligations of heritage owners, administrative and other protective measures including heritage research and development control, public participation and the like. The overall principle of all these issues is to keep balance between private and public development interest at one hand and heritage rights (rights to enjoy heritage) and other human rights guaranteed by our Constitution at the other.

An analysis of weaknesses of current heritage management in Slovenia shows three areas that represent weak links in the system of protection. Two of these areas are formally already regulated but need better practical arrangements and fresh approaches, especially in financial and organisational sense. High quality management of monuments and sites where the state is the majority owner should become one of the crucial medium-term goals of the protection policy at the state level. All that is needed are some minor adjustments of the legislative framework which can be achieved through decisions at the level of government decrees. The second area deserving upgradation are heritage maintenance and timely in situ monitoring of its condition which could be achieved through appropriate shift from direct subsidies for restoration to tax reliefs for maintenance.

The third area can be described as democratisation of the heritage. To achieve it, a political will and the support of civil society are fundamental. The framework can be provided by a cultural heritage protection strategy which would trace the path for better integration of heritage communities into heritage identification, evaluation and management. According the Council of Europe Framework Convention on the Value of Cultural Heritage for Society (Faro 2005, Article 2), the existence of our heritage depends on how present generations *“value specific aspects of heritage which they wish, within the framework of public action, to sustain and transmit to future generations.”*

Bibliography

Bare Act

Cultural heritage Protection Act (2008)



Legal and administrative framework for the protection of heritage in Argentina

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Ms. Maria Marta Rae

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In 2009 she worked on a methodology called capital adequacy, which is derived software and applied in real estate. Currently it is expanding the spectrum of research for furniture, livestock and intangible assets within a permanent program to score the regulatory system in the field of Culture.

Abstract

The term "heritage" comes from patrimony (Latin origin) and refers to a kind of exaltation of eminent property. Also "Heritage" is a concept of stock. To be "Heritage" the good must be identified and valued by the society. This means that the good must first go through the legal system and specifically by the rule system. The fact is that every day and more often different heritage goods are lost. This problem is increased because the concept of "Heritage" is continuously expanding, causing the paradigm on "Heritage Protection" also changes due to the constant change of its protection scale, creating new unresolved legal and administrative complications. Heritage is contained within the Cultural Law. The law must have tools for analysis to obtain a certain economic value based on the compensation that must be recognized.

Keywords

Heritage, Protection, Legal provisions, Declaration

1.0 Introduction

Roberto Fernandez (2000, p.48) indicates that *the notion of heritage is inseparable from its historical characterization: there is practically no idea of heritage corpus without historicity or certain historical preferentiality. The idea of part, object or heritage good - and also, the notion of monument - is such, especially in its capacity to retain inscriptions or traces of a more or less long historical past.*

International standards are specific as regards the definitions of different conceptual terms. In Chapter 1, article 1: General Provisions of the International Charter of The Hague 1954, the scopes on cultural properties are expressed whatever their origin or ownership:

- a. *The movable or immovable property of great importance to the cultural heritage of peoples, such as "monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as set offer a great historical or artistic interest; works of art, manuscripts, books and other objects of historical, artistic or archaeological interest, as well as scientific collections and important collections of books or archives or of reproductions of property above defined."*
- b. *Buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in paragraph a), such as museums, large libraries and deposits of archives, and shelters intended to protect cultural movable goods in case of armed conflict as defined in paragraph a);*
- c. *The centers containing a large amount of cultural property as defined in paragraphs a) and b) that will be called "Monumental Centers".*

The concept of cultural heritage and/or cultural goods, can be called as the group of goods (movable and immovable, tangible and intangible, divisible and indivisible; simple and compound, universality of things, universality of rights, main and accessory things, owned by individuals, institutions and public or semipublic bodies), *with a value, which can range from the exceptional to the modest or vernacular work, from the point of view of history, art, science and culture, and therefore worthy of being preserved by the people through generations as permanent features of their identity.*" (Harvey E.R., 1980) "In turn, it can be tangible or intangible" (Arias Incolla, 1997).

To safeguard cultural property that are material objects, tangible and intangible, while fall within the real rights, *the man needs to know simultaneously and reassess the presence of intangible phenomena that give meaning the tangible, relating them to their existence and essence. This process, which occurs through various ways of being and belonging, gives such property the feature of living heritage, an inseparable part of the collective memory of peoples* (Arias Incolla, 1997).

The national (Argentina), provincial (Buenos Aires) or municipal (La Plata) states, through the executive and legislative powers have the mission to assess and manage these heritage goods, developing actions and policy frameworks. In this sense, the National Constitution (1994) refers to them in article 41 second paragraph; article 75 Inc. 19 in fine, and article 125 in fine. These constitutional principles of the promotion and preservation of historical, artistic and

scientific heritage, expand the concept in the Civil and Commercial Code (2014), mentioned in art. 235 Inc. h, a) "the ruins and archaeological and paleontological sites" Moreover, these goods are given a rating and a protection duty at highest level of the hierarchy of norms, reinforcing the existing legislation.

Therefore, it must be noted that, by the generality of the normative statement in the articles of the National Constitution, not all goods of this kind can be assimilated into the public domain of the State. Regardless of its ownership, because they could be of the private domain of the state, or even of individual domain, their characteristics will enable them to frame them in this concept of "cultural goods of public domain".(Dromi, 2004, p.902)

The reason for the specific treatment of these assets is that they are considered as an expression of personality and own the cultural heritage of Argentina, whose ownership and destination exceed the purposes of material use that is defined by its public service destination as they are related to the identity and tradition of the country. *Cultural goods of public domain or cultural heritage goods are considered a resource because it is necessary for its conservation in the short, medium and long term* (ICOMOS-Quito Law, 1967). They represent an economic value and are likely to establish themselves as instruments of progress. Heritage in the administrative procedure is considered an expense and not a resource.

2.0 The problem of management: Insufficiency of the "Legal Declaration", in different domain variables

One of the aspects of the problem is failure in the procedure and in the "Legal Declaration". This section describes synthetically the process of declaration and where such failure is displayed.

The National Commission of Historic Monuments, Place and Heritage Goods, under national law 27103 (amending), and in the province of Buenos Aires, the Provincial Directorate of Cultural Heritage that depends on the Cultural Institute under provincial law 13056, are responsible for managing and administrating the "Cultural Heritage". Among its missions and functions it is included the ability to certify whether the goods proposed deserve to be valued and then heritage categorized through legal declarations, sanctioned by the Legislative Power (National Congress and/or the Legislature of the province of Buenos Aires) and promulgated by the Executive Power (National Presidency and/or the Government of Buenos Aires).

To achieve legal declaration it is necessary to go first through the *sine qua non* of the heritage valuation. This depends on the many variables to determine the value of the case study. The variables are analyzed from the qualitative and comparative point of view, ranging from the various subjects that make the tangible and intangible heritage: urban, architectural, technical, constructive, historical, testimonial, archaeological, paleontological, anthropologic, musicological, artistic, sculptural, environmental, technological and scientific. These variables are based on authentic documentation that is collected on the case, to allow evaluation and to determine the heritage valuation.

It is important to realize that the term *legal declaration* as a legal instrument is linked to the recognition of the heritage good given by its heritage valuation, which becomes a *restriction to the domain*, in order to protect and include it in the cultural heritage.

Roberto Dromi (2004, p.886), defines the Declaration as: "Legal Declaration" and he says ... "for not having natural public goods or by natural right, but only by a statutory declaration, it is a state act that establishes the domain of a thing anyone its origin or nature is; it is always attributive of the public nature of the good". Based on empirical facts, to this definition it is added the concept that *the Legal Declaration* is considered as a formal act by jurisperitus, issued by the State which has a range that varies from the special to the general and its objective based on the protection of the Cultural and Natural Heritage.

The Legal Declaration works by classifying, and in this way goods go directly to a system called *heritage list*. For each declared good a situation record is generated based on its *heritage valuation*. The set of records is a *catalog*. Alongside, once the declaration of property or properties is done, this or these should be recorded.

The requisite for a legal declaration:

Initially, it is necessary *to study the domain of the goods*, when a good is legally declared its domain changes, having an *added value*, becoming a cultural public domain good. In legal terms, the domain *is the real right to enjoy and dispose of all the active elements of a patrimony. That is, the set of things and rights capable of being used or to produce any value in the most absolute way, as far as laws or orders issued by the competent authority are not infringed. To produce a heritage effect, goods must be appropriated by their condition.* (Moreno Rodriguez R, 1998, p.100) In this paper, this condition has the characteristic of a precarious domain within the scope of the legal concept of Trust. (Maury de González, 1999)

The property is ranked based on various criteria according to the Civil and Commercial Code: in Article 225 according to its nature; in Article 226 by accession; in Article 229 by main things; in Article 230 by accessory things; in Article 235 by the subject of whose patrimony they are part of in public property domain and in Article 236 by private State domain; in Article 238 they are private goods. Besides, in Article 227, tangible goods are divided according to their movement: real estate and movable property, incorporeal property: credits, rights and shares.

Article 240 of the Civil and Commercial Code sets out the limits on the exercise of individual rights on the property: *"The exercise of individual rights on the goods ... must be consistent with collective rights. They must be in agreement with norms of national and local administrative law issued in public interest and they should not affect the functioning and sustainability of ecosystems of flora, fauna, biodiversity, water, cultural values, landscape, according to the criteria set in the special law."* (National Congress of Argentina, C. &C.C, 2014)

2.1 Real Estate

The property can be further classified: a) by nature and b) accession. (Aguar, A, 2000)

- a) By nature: immovable property by nature is the ground, things incorporated in an organic way into it, and those that are under the ground without man's intervention (article 225 of the Civil and Commercial Code). Ex: mine caves, prehistoric footprints.
- b) By accession: property by accession is movable things that are immobilized by physical adhesion to the ground as a matter enduring. In this case, the movable property forms a whole with the immovable property and cannot be subject of a separate law without the will of the owner. Ex: buildings, wall paintings.

It is not considered immovable property by accession, any material thing affected to the exploitation of the property or to the activity of the owner (Article 226 of the Civil and Commercial Code).

This paper addresses in principle, the specific subdivision of tangible assets: immovable and movable property. Both of them can be individual property or public or private state property, which in turn are incorporated into the Cultural and Natural Heritage, because they are stable and must be categorized, as suggested by the Commission Franceschini (1964-1967) in Italy that gives the legal status to cultural property, (González Varas, 1999, p.46). On the other hand, UNESCO in the Paris Conference in 1972 categorized property from the cultural and natural orbit.

In Argentina, the National Commission of Monuments, Sites and Historic Goods (NCMSHG) created by law 12665/1940 with its amendment 27103/2014, in its Art. 7 enlarged the scope of the register of heritage categories. Besides, Provisions 5 and 6 of 1991 of the NCMSHG and law 25197/1999 of the National Register of Cultural Property define and dictate the Heritage categories with their different types. In the province of Buenos Aires, other types of heritage categories are defined as set out in law 10419/86 and its amendment and expansion 12739/01, as in the law 12704/01.

The property is applied in the heritage category which is enrolled in a legal declaration project. Here there is a relationship with the domain that has a preliminary procedure which is the heritage valuation. In other words, the domain study is another variable within the property valuation and it is described below.

2.1.1 Property of individuals

Individual goods have two ways for legal declaration: one generated by the will and agreement of the owner, with explicit authorization through a written note, and other generated by a state official, with the same authorization form for the owner. When a property is legally declared and possesses its maximum protection, it becomes a *public utility declaration* and it is *subject to expropriation*. This possibility is decided only by the State. (Juliá, 2001, p.94-95)

To avoid public utility expropriation when there is a legal declaratory, a possible solution is encouraged: grant an instrument to those individuals who own a property with unique characteristics within the Cultural Heritage, as Italy raised by the Charter of the Restoration, *that the heritage good would be unaffected by land taxes*. On the other hand, if the State needs the property with highest priority, it acts on the property domain drastically, which is the "expropriation" (Chapter II, Article 5, paragraph b, Chapter VI as well as Article 13 of Law 10,419/86, province of Buenos Aires), on property of individuals.

There is a third possibility that are the mistakes in the process of legal declaration where legal actions and their respective interconnections of communication with the community, are not intimately rooted because there are riots and lack of knowledge and understanding about legislative customs, where the times and ways, have a limited period of approximately two years. This causes a lack of communication with society, since there is no effective publicity about the cases to testify, to then be transformed into law. The result is the acceleration of time and previous barriers of communication with the owner, who does not authorizes in a timely manner. Declared goods are generated without the consent of the owner. This consent must be a prior instance of management which belongs to draft legal declaration. So, the executive presents an essential requirement and recommendation that the owner must include a note of acknowledgment and acceptance of the declaration of the property in question.

Real estate processes in the cities have generally been studied from the historical-artistic point of view, where the loss of these processes by the lack of cultural heritage has been highlighted. The signals of identity of cities and the quality of the urban environment are preserved in the cultural heritage. Even with valuable exceptions, it is frequent that the approach to the problem does not introduce economic factors in the legal analysis, only to blame "speculation" for the disaster, incarnation of interest without any aesthetic or cultural sensitivity, *to which the "forces of culture" are disarmed, immersed in a world ruled by economic interests that are foreign to them*. (Gago Llorente, 1986, p.41)

"The main problem is in the structure of ownership and property management, and lack of management mechanisms, designed to volume of needs (...). Finally, the problem is basically economic: the private property does not recover investment". (Anonymous, 1989)

The problem of this subject lies directly in the heritage of individuals. If you go from the general to the particular, and vice versa, then the analysis is from the state to private owners and vice versa. The causes of deterioration are reflected in:

Estate planning criteria are not embodied in urban codes. This regulation is insufficient for action to protect, mostly because the real estate valuation lies in the possible project opportunities that a property generates on a high density place due to the fear of abandonment and deterioration of the historic center. This case generates changes in parameters on urban indicators: ground occupation factor (FOT) and soil occupation factor (FOS) that raise the density and prefix heights previously planned. This planning involves the destruction of heritage goods, without giving them the real heritage valuation and enhancing the destruction of the environment and then of each architectural heritage property.

The other problem begins in individuals and ends in the State, with the lack of implementation and enforcement of the norm: *urban codes* and special norms in the protection of cultural heritage, based on the scope of each case.

Housing valuations are based on the Urban Code. This valuation leads to problems, as in the specific case of the devaluation of the cultural heritage, which is in the essence of the law of taxation, where destruction of heritage is clearly evident. Urban Codes and National Pricing Law are tools of continuous use containing "valuation methods and formulas" for implementation in tangible goods. The criterion that arises in the regulations on historic property does not consider the heritage valuation and therefore the financial economic assessment. The result is to be supplanted by a common property.

What is achieved with this? Only the depreciation, but from the point of view of the market, that for some architectural pieces that do not support any change in its materiality. Therefore the inevitable destruction occurs and what it is worth is the ground in its current situation. This assessment only considers the potential capital for a future construction as an investment.

Another problem within the property valuation criteria: is that a property is considered for its individual and local characteristics and that the valuation and assessment in the housing market, is done through comparative scale in the local jurisdiction. This evaluation it is known by various terms: appraisal, assessment, market value, and property valorization. But if a heritage property belongs to a "collection" or "series" is not considered, because they can be located in the same or different properties in the same or different jurisdictions: local, provincial, national or global. Here, the heritage criterion depends only on heritage valuation which can be multi-jurisdictional; hence the economic heritage assessment will depend on this attribute. These problems are not currently considered from the economic framework in the cultural heritage.

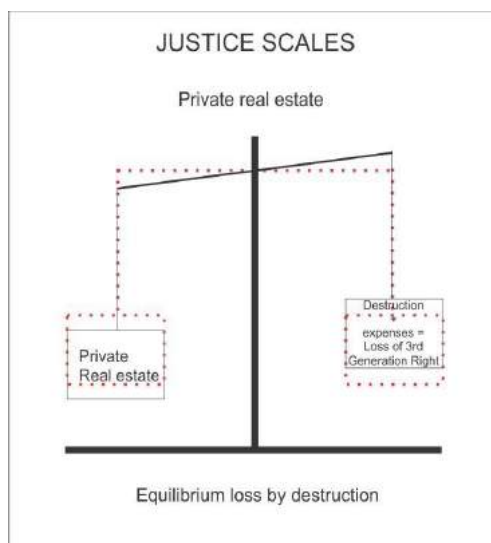


Figure 1

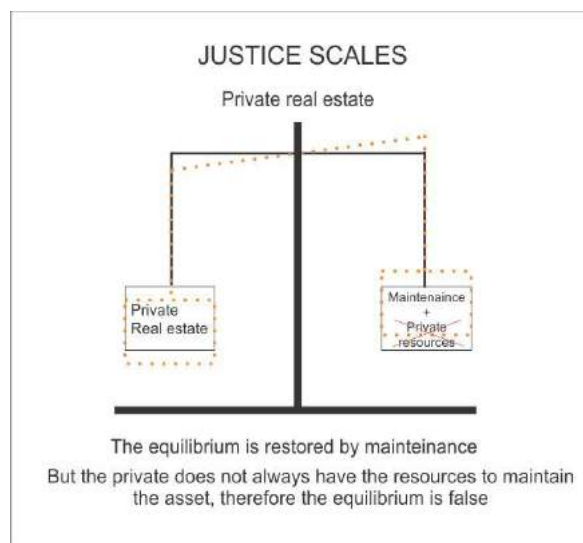


Figure 2

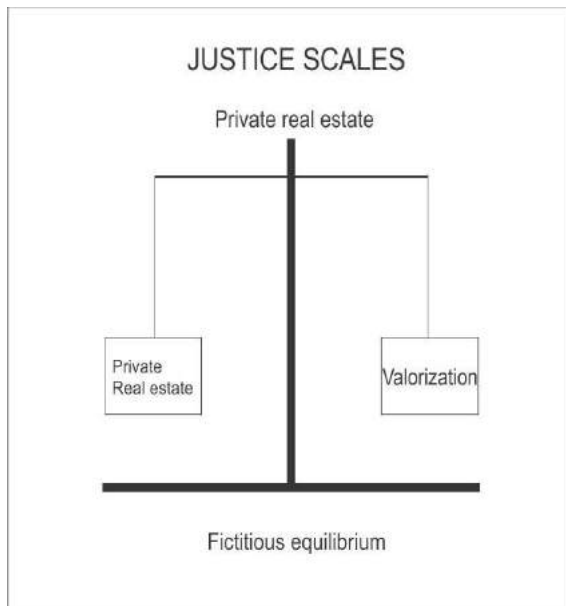


Figure 3

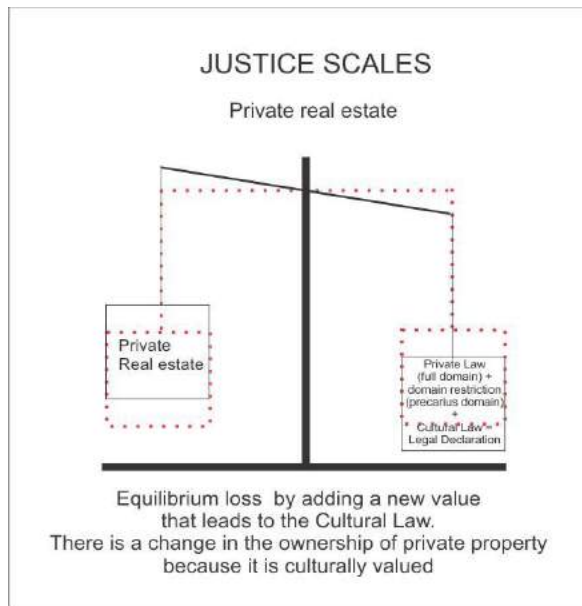


Figure 4

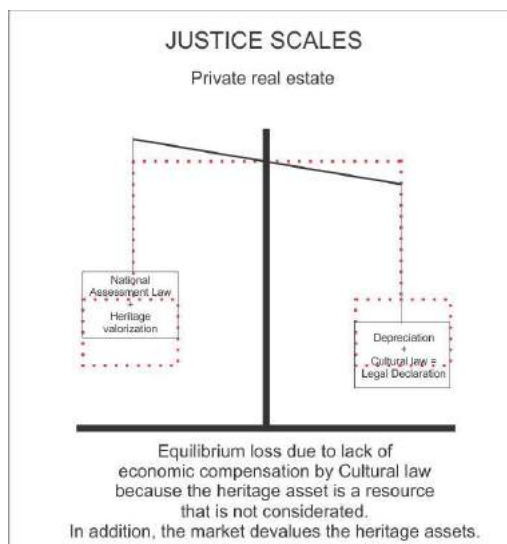


Figure 5

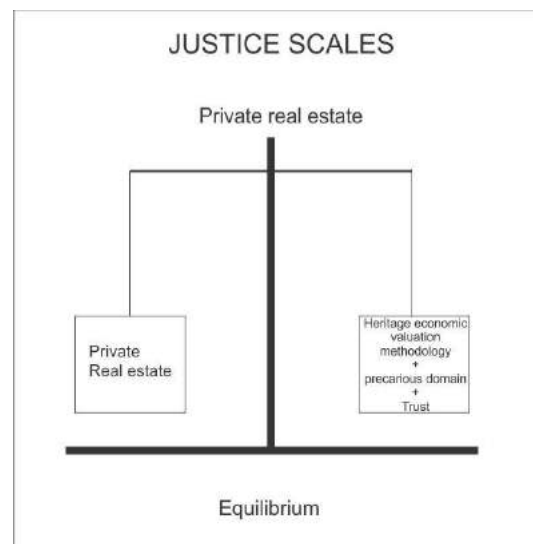


Figure 6

2.1.2 Private property of the State and State property

Property of Catholic worship, universities and railways are of "private state" domain. These are already exempt from property taxes and income tax. Here the legal declaration becomes a tool of management, expert technical advice and application of law, for resources for any democratic means.

Finally, there are goods whose domain is the States, national, provincial or municipal. For this case, the figure of management, in a stylistic, historical or functional environment, has been created through regulations. Heritage valuation is considered through the temporality on those buildings or movable property of more than fifty years. The norms are in the province of Buenos Aires Decree 5839/89, and at national level National Decree 1063/82. They could be incorporated in technical advice.

The valorization of these goods (movable property or real state) is not a heritage management process. But in assessing the damage or the crimes on this heritage good, it is valued as a common property, without adding the value that "Cultural Heritage" should have.

As regards heritage conservation Provincial Decree 132 and/or Recuperarq Program was implemented within the policies of the State. Both act in real states that must be preserved.

2.2 The administrative procedure: the way of management in the process of recognition

The forces of the organized community are carried out through government, non-governmental, non-profit or mixed structures.

There are weaknesses in the administrative procedure, due to continuous nominalism in the regulations. This nominalism is meaningful, leading to its manifestation (application specific methodologies), which are often nonexistent. Also the way of heritage management is involved in this issue, where the recognition process is diffuse and thus complicates the financial transparency for heritage economic valuation. (H.E.V) (Rae, 2009, Chapter 9th, p.126). This nonexistent method in the organs of municipal, provincial and / or national executive only occurs in the highest degree of academic level at the University, in the subject Economic Management in the Mastery of Architectural and Urban Heritage management, dictated from 2015.

From the promulgation of Law 13056 / 2003 referred to the "Creation of the Cultural Institute of the Province of Buenos Aires", which contains in its art. 35 the incorporation of Law 10419 / 86 where all the powers and functions it has are transferred to the Cultural Institute, that is to say to assess and categorize the goods that lead to legal declarations. Also the Law 13056 in its RT. 20 mentions that this body is the administrator of the legal concept of Trust. Therefore, the competition body is both managers of cultural heritage and of the legal concept of trust. The failure in the administrative procedure is that there is no type of relationship between the two items. This relationship will be called patrimonial administrative procedure.

The trust in its modus operandi leads to achieve an agreement between the parties. This contract generates an assessment method for the provincial cultural goods. This method is non-existent in the Heritage area, but it exists in the legislation on housing planning called "Law of fair access to habitat," in Articles 38 to 41 "The Heritage Trust Fund, system, financing and technical assistance."

Therefore, the Trust developed sequentially as trust-contract; contract-appraisal method inserted in the patrimonial administrative procedure can generate a noticeable change because existing variables and unknowns are also incorporated. This procedure, called patrimonial economic valuation method, not only serves as a tool for economic valuation but also acts as an impact heritage method, because it links the aspects of heredity in relation to the events that it may suffer over time including the climate change.

The relationships among all these variables are called links, and are listed below.

1st link: The legal term that acts as economic interconnection

The amending national law 27103/2014 of law 12665/1940 and Regulatory Decree 84005, of law 12665, in its article 7 dictates that the cultural heritage assets must be appraised in Argentina. This is moved by judicial hierarchy, to Buenos Aires Province, although the term "assessment" or any other synonym does not exist in the Law 10419 of Buenos Aires Province. It is necessary to compare the above said with international standards. Municipal regulations of the City of New York (et al 1998) regulating urban parts, sites of urban landmarks, interior urban parts, scenic landmarks and historic sites were chosen.

This international standard requests to take into account the market value and therefore to complete the property appraisal before starting the legal declaratory procedure. Therefore, the term "assessment" is enunciated in the national legislation and as an application background; the international standard considers it as an essential prerequisite.

The instructions are the heritage management requirements in Buenos Aires Province and the Nation. There is no term assessment in them, becoming insufficient for the purpose of a Heritage economic valuation methodology.

In conclusion, the problem of heritage protection, established in the first link is: the knowledge and update of a good market value. This work is called "economic assessment of the property" before being declared legally, delivering a fair price.

A legal declaration must include this variable to be applied in the heritage economic assessment methodology. Then the corresponding taxes are deducted. It is necessary to consider the parcel regime, which are the tools to plan cultural, political, economic and/or tax actions. The assessment broadens the criteria for heritage planning, where heritage is not exempt from land and property records. In addition, it serves in assessing the land profitability and in generating taxes to the treasury in a more accurate policy in relation to the heritage protection.

2nd link: The legal nominalism and inadequacy application in its content

The second link arises from the lack of Legal concept Trusts as a requirement for the administration of the Heritage assets. The trust contract must be resolved in each individual case established in the procedural law. Therefore, it must also be included in the opinion of the body of law: legal declaration to become an economic tool with real protection, according to the times.

Regarding scale changes in heritage, this is seen in heritage categories that are located within legal declarations, first legal instrument where it is seen. The standard also dictates: jurisdictions and property. To achieve a finish link it is essential to include all these data into a contract or agreement where the specificities that must be protected are described, no matter the financial scale the property possesses.

Since the enactment of Law 13056, the possibility of generating programs for the recovery of cultural property is proposed, also creating the new figure of "funds" and processing them through Trusts. These instruments are not applied nowadays according to the rigor of the law,

but subsequently, they will be an important tool to protect them as it is done with "COAP Funds".

In state policies, there may be different approaches to the same central theme. The Incorporation of "COAP Funds" in the law 13056, in the management of the Cultural Institute, acts as an economic fund, as outlined in Article 3 of Law 6174. The aim of this is to protect Heritage assets.

On the other hand, to locate the field of study of public finance, it is necessary to identify the public sector of the economy which is directly linked to the private sector, which may influence the effects of change in the sector public variables. So, it was necessary to see the status of management in relation to declared goods and the theoretical economic guidelines.

Public finances study the process of income-expenditure of a certain economic unity of the state and it is presented in monetary terms. (Nuñez Miñana, 2001, p.19) The fiscal policy that is implemented through state activity proposes various aims; one of them was to create an institutional and economic change in which an entity "Cultural Institute" with autarchic hierarchy was created.

Also, if it is considered that the adopted fiscal policy is in fact the achievement of most of the goals of the modern state, which requires the monetary expenses and obtaining resources to face the fiscal policy (Nuñez Miñana, 2001, p.13). The precise way in which the state determines the total amount and composition of expenditures and resources, is an item within fiscal policy.

However, the Cultural Institute is nested economically because it is awarded its own budget classified by purpose. Additionally, there exists the application of expenditures based on program budgets within the law 13056.

Within the economic structure in relation to the implications of tangible goods legally declared is the "economic classification of expenditures" in both current and capital expenditure, is not detected.

In connection with public resources, classified as "traditional of legal nature", they may to be original or derivative. The first ones come from property sale or rent; the second ones from the private sector through taxes or coercive payment. For the subject property, there is a benefit in taxes for the owner. Thus, there is a tax relief in legislation in the cultural heritage by national Decree No. 9830/1951.

A new classification defined as "institutional resources" is enunciated in articles 19, 20 and 21 of the provincial law 13056. This is the organization that raises funds and that are assigned to Provincial Bank of Buenos Aires, but there is no article that determines the shape of application within the norm in order to protect the assets categorized and included in the Cultural Heritage.

3rd link: The confusion by the terminology in Heritage categories

From the perspective of Nuñez Miñana (2001, p.20), the fundamental point for public finances is the interaction of decisions and effects between the public and private sector. Based on this concept, the problem is in the core of the internal analysis of the public sector. Part of the generated conceptual differences are 1. The change in the objectives of the public sector study, which has changed the scope in the economic and financial terms; data observed in the second link. 2. These changes involve the study of the third link, which is the confusion given by the terminology for categorization and protection. 3. The fourth link corresponds to the organizational disorder in the heritage administrative procedure.

This work emphasizes the problem of legal Declaration in general, since the legislation is not satisfied and it is insufficient as an effective tool for comprehensive protection. The above mentioned rules: (National Law 12665/40 and its Decree 84005/41 and its amending law 27103/2014) Law 23618/88 and Law 21386/74 and in Buenos Aires Province: law 10419/86 and its decree 3779/86 and amending law 12739/01 and the law 12704/01, are possible instruments to protect cultural property. Inter-connective elements, which are all situations not covered from the different optical techniques, scientific and legal, are lacking.

From the personal point of view it is considered that another cause of disturbance occurs in the great disorder of the nomenclature of heritage categorization, causing confusion on the names that are not hierarchical: whether they are "of interest" "good of interest incorporated in the Cultural Heritage", "Historical Monument"; "good of interest", "goods of heritage interest", "good incorporated in the Cultural Heritage" or specific types according to professionals items regarding the economic findings and put in value that can be: "artistic", "archaeological", "paleontology", "cultural", "testimonial-historical"; "architectural", "architectural-artistic", etc. Another problem is the lack of clarity in the definition of nomenclatures of categorization and consequently the boundaries before being applied in specificity: technical, patrimonial, legal, and economic with relation to heritage goods.

But legal declarations vary in their hierarchy of protection: from a front to a historic center with the different variants that they imply. Within the legal declaration the term "use" of a property or properties appears. If all legal declarations in Buenos Aires Province are taken, only 20% has changed the "use" in the items: housing, theaters, cinemas and railway stations that become museums, cultural centers, and / or changes that have to do with public use.

Before the legal declaration the good possesses a full domain state. The legal declaration a new domain state is obtained (precarious). The conflict arises when the law is applied through the city codes where protection is only simplifies in the fronts.

It is necessary to note that when the Legal Declaration is applied - as it is a restriction to the domain - it consider the entire plot, although it covers only a sector of the property, therefore the tax relief is for the entire plot and the surface having the cultural value is not taken into account. Therefore, it would be advisable the surface to be a plausible legal technical instrument within the domain restrictions. If the declarative level increases: - as area, settlement, center, and/or city, the land demarcation, is not considered for the purposes of

tax deductibility. It should be noted that these categorizations are still a restriction on the domain and are not considered for the tax relief, therefore the surface is considered.

The division of natural territory from town planning, sometimes results in a series of conflicting terms and makes reference to different scales: rural and urban; centers and villages; areas, sites and locations; blocks and parcels of property; and functional unit of horizontal property.

But in legal Declarations this hierarchy classification varies considerably, because the delimitation of these declarations is the result of the union of the historical with the current called "put in value" (architectural, urban, archaeological and paleontological) which will be evaluated and assessed obtaining a result. This result is an extension of the concept of heritage valuation. The object of study may be in one or more fields. The lands have an economic value in the real estate market; they are registered in the land register and taxed.

Nowadays, when a property is declared, all the corresponding area of one or several plots can be considered, including the not valuated area. The last one is also tax relief from land taxes, losing a large percentage of tax sharing between the municipality, province and nation.

4th link: The disorder in the heritage organization in the administrative procedure

Administrative procedures are hierarchical, expeditious and efficient. The heritage research is usually considered an obstacle within management. The flow of a record in the management must access to the official body and should go through a specialized department two or three times.

Example: A case legally declared at the provincial level, has are two legal declarations on the same property within a period of a few months and with the same goal, to be declared "Monument". It is one of the large conflicts that exist in the administrative way classified as redundant.

The heritage management in relation to heritage protection propitiates general policies. But, if there is a theoretical-practical confusion, inexperience and redundancy, they are one of the direct or indirect causes of the destruction of much of the heritage asset value. This is the demonstration of non-compliance of rules within government agencies *that protect the cultural heritage which are ineffective and inadequate in the administrative procedure.* (Tartarini, 2001, p.172)

The nation and Buenos Aires province are generating a transformation in the way of posing the culture and therefore the system.

Although in relation to the built heritage there are still losing valuable pieces and the cause of this loss is due to the discontinuous process existing unresolved gaps of knowledge produced by a fuzzy relation of Culture and little integration with the economy, raised by Spaniards.(Gago Llorente, 1986, p.41-54)

Therefore, the above mentioned objective must value heritage economically. It is often difficult to enforce due to a series of different philosophical and complex reasons and besides of different multidisciplinary, interdisciplinary and transdisciplinary levels. As regards its

generality or particularity it is rooted in intricate problems in the economic policy of conservation. (ICOMOS, Ost, c2004, p.2)

Lack of knowledge in some municipalities of the province of Buenos Aires is also detected due to lack of legislation (Heritage Codes). Whereas in other districts of the province, they do not only possess Urban Codes but also have catalogs, extensions and/or annexes about the preservation of cultural and natural heritage.

Only a small percentage of all districts in Buenos Aires province contain regulations according to the Heritage protection and planning. But these regulations are insufficient. They become tools of qualitative evaluation and do not protect the economic aspects, both to the piece and to the heritage center.

Another problem that depends on the policy of the moment that tends to inefficiency of heritage preservation is due to the fact that is not in the political agenda, it is only applied in exceptional, sporadic and isolated cases. Example: Valuation is carried out on cases based on human rights (places where disappearances and torture centers of people occurred, Armada Mechanical School that was turned into a museum).

3.0 Conclusions

In conclusion the land and the building, each of them have a net value. They are assessed and they are inserted in the market and they have a legal framework. That assessment process is not carried out unless it is requested. Therefore, it is not considered a sine qua non principle before beginning a declarative process. The legally declared good has a heritage aggregate value as an "architectural piece".

The State acts as comptroller, but the heritage evaluation, which consists of qualitative and quantitative valorization is not completed; the first is carried out but the second is not. The forces of the economy set the course for heritage protection, where also the legal actions are inserted.

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Conservation of cultural heritage in Turkey

Dr. Tamer Gok

About:

Dr. Tamer Gok earned his undergraduate and master's degree from Middle East Technical University and his doctorate education from Istanbul Technical University. Dr. Tamer Gok worked as lecturer in Middle East Technical University between 1971 and 1984 and as instructor between 1986 and 1998 in Cukurova University. He joined as a teaching staff of Faculty of Architecture, at Mersin University since 1998.

Abstract

The paper gives a brief description of the concepts, organizations and the institutions related to the preservation of heritage in Turkey along with their functions and responsibilities. It then discusses the great issue of management and maintenance of cultural heritage in Turkey. The problem of financing the conservation efforts is tackled towards the end of the paper. The paper concludes with a remark that the need of the hour is a campaign of "awareness raising" and "consciousness creating" among citizens, so that everyone believes in the value of inherited heritage and behaves actively for this goal.

Keywords

Heritage, Cultural Property, Rehabilitation, Gentrification

1.0 Heritage Definitions

1.1 Cultural Property should have the following characteristics (requirement by the National Law):

1.1.1 Originality, cultural and scientific value.

1.1.2 It should be of "historic" or "pre-historic" times.

1.1.3 Representing the social and cultural life, arts, folklore, etc., of a specific period.

1.1.4 It could be on ground, underground or underwater.

1.1.5 Tangible, immovable (generally) or movable physical assets.

1.2 Architectural Heritage: Buildings

1.2.1 Monuments: temples, churches, mosques, palaces, amphitheaters and related public buildings.

1.2.3 Traditional Houses: Residential units and houses of old times that have architectural and cultural attributes.

Architectural heritage is grouped under two headings:

The First Grade which includes the monuments and similar public buildings, where the holistic character, the originality and the identity has to be kept as it is. No major interventions or alterations are permitted. A new function can be assigned to the building; however the originality of the cultural asset should not be disturbed. The second grade comprises of simple buildings and residential units which can be re-functioned and where inner decorations and alterations are possible. But the outer appearance and facades of the buildings has to be kept as same.

1.3 Sites

Sites are conservation areas and are categorized under four categories:

1.3.1 Archaeological Sites. These sites are the remains of several civilizations both from pre-historic and historic (antique) times; presumably ending by the Ottoman Empire that is the end of 13th century.

1.3.2 Historic Sites. There are certain places and locations where a historic incident has happened and that remains as a memoire in the minds and culture of the citizens or groups of people. There usually stands a physical element or an architectural object that reminds the historic event.

1.3.3 Urban Sites. These are the parts of cities or settlements having an original/historic nature, resembling the traditional fabric of a "life" and/or culture. These clusters of dwellings and buildings of a certain historic time have significant cultural value inherited.

1.3.4 Urban-Archaeological Site. Such places are locations of both first and the third categories, overlapping and sort of mixed with each other.

1.4 Archaeological Site categories: The Ministry of Culture is entitled to decide on the type and fate of such areas:

1st Grade Archaeological Site: Ruins and remains of cultural heritage are clearly observed and kept. Only scientific excavation and restoration by museums or archaeological excavation teams are permitted.

2nd Grade Archaeological Site: Same nature as the first degree; however there are people living in the site and it are a de facto living urban area or part of a human settlement.

3rd Grade Archaeological Site: These are probable archaeological sites, and there is strong evidence that remains could be discovered if an excavation is conducted. Urban developments in such areas are not permitted unless a proper examination or a sample excavation is done by the museum's archaeologists.

Buffer Zones (protection zones): A protection belt is provided around the "listed" entity (monument, traditional house, or similar architectural object). Buffer zones cannot be created around archaeological sites because of the provision of the Law, but there is such a need and an amendment has to be done in the law to enable such labeling.

2.0 Organizations & Institutions

2.1 The Ministry of Culture and its local branches:

The main body of public organization in Turkey which is responsible for the preservation and conservation of cultural heritage is the **Ministry of Culture and Tourism**. Out of several departments of the Ministry, "**General Directorate of Cultural Heritage and Museums**" is the authorized section that is specialized in these affairs and it is located in the capital city.

Besides the General Directorate in the capital, there are regional offices in charge of conservation issues of that district. Every regional office also has a decision making body called "**Regional board for the conservation of cultural heritage**" that is composed of architects, urban planners, archaeologists, art historians and lawyers.

2.2 Local Governments (Municipalities):

2.2.1 Greater City Municipalities

2.2.2 District Municipalities

Municipalities are the local public authorities which is authorized and responsible for the implementation and realization of conservation decisions of the Regional Board. For this purpose KUDEB Units (bureau for preservation implementation and control) are established at almost every specific municipality specialized in conservation subject.

3.0 Management and Maintenance issues

3.1 OWNER: A cultural property, if it is listed and registered officially, is under the responsibility of its owner and possessor, and that person is obliged to keep the property in good and original position. If not, a legal action is initiated against him/her by the public prosecutor.

3.2 MUNICIPALITIES: The local administration also has a responsibility in providing all the necessary measures for the well-being of the inherited cultural heritage. Among these are the environmental amenities required for the proper preservation of the asset. It is the duty of the municipalities to prepare urban conservation and gentrification plans, and then implement them for the future livability of the area.

3.3 MINISTRY OF CULTURE & TOURISM: The Ministry is the national organization for overall administration and realization of all types of cultural heritage. By law, the state is the sole owner of any archaeological remain and element within the boundaries of the country regardless of being underground, over ground or in water. Any intervention, whatever the nature and type, has to be with a project or plan and be ratified by the organs of the Ministry. The Ministry also is advised to give financial aid or loan to those individuals who intend to restore their buildings, or houses.

3.4 ARCHAEOLOGICAL AREAS: As stated above; excavation, conservation and restoration of archaeological sites are controlled and regulated by the Ministry. The artifacts found can either be removed to a museum or kept in-situ depending on the conditions of the site, according to the decision of the Regional Board for Cultural Heritage.

3.5 MONUMENTS: Monuments are those buildings which have been build mainly for public use and are of outstanding architectural greatness and value of their era, examples such as temples, amphitheatres, public baths, palaces, churches, mosques, etc. Such cultural heritage properties are grouped as 1st Grade buildings, meaning that they require utmost attention and no intervention or alteration is possible during the restoration process. Drawings of the existing situation, restitution and restoration plans have to be examined and ratified by the Regional Boards for the Conservation of Cultural Heritage. New functions are seldom assigned to such monuments, but that should never disturb the monumental character of the property.

For such monumental buildings detailed projects and sometimes technical reports are required since most of them have been surviving since centuries and even millenniums. Careful handling is compulsory because of the close scrutiny of UNESCO's experts and principles.

3.6 TRADITIONAL HOUSES: Traditional houses or such dwellings are better advised to be kept in clusters, thus at the same time showing the old historic urban fabric that reflects the life and culture of old civilizations. These houses exhibiting vernacular architecture of old times are given new functions and uses when necessary, since the viability of them depends upon proper management and good maintenance. They are usually grouped as 2nd Grade buildings, where inner decorations and changes in the layout are tolerated, as long as the outer appearance and stability of the structure is favorable.

In case if only minor repairs are targeted, the written permit of the local museum and the municipality is sufficient, no extra efforts like projects or plans are asked. Otherwise drawings of the present situation, restitution and restoration plans are compulsory which brings great burden to the owner or possessor. Generally the financial condition or the limited budget of the owner does not enable him to make such expenses and this leads to undesirable and also illegal physical modification of the cultural property.

3.7 DISAPPEARANCE OF LISTED PROPERTIES: It might look strange but this has been a big issue in the conservation process of the cultural heritage in Turkey when, the department and the regional board for conservation of cultural heritage is notified that certain monument or traditional house has disappeared from existence. The owner or the possessor demands the removal of that specific cultural property from the registration list; consequently this removal will enable the holder of the property to develop freely without any bounding criteria.

The reasons usually given for the unintended disappearance are; *being demolished by natural causes like excess rain, storm, earthquake, or being burnt or knocked down by vagrant, illegal stray people*. Thus the owner and the possessor would not be held responsible for the uncared attitude towards the listed property. That is the designed scenario. Generally the case is taken to the court by the public prosecutor, but this measure hasn't been a discouraging factor for people who intend to destroy that property.

What could be done is to reduce the burden of maintenance of such old cultural properties to their owners, and introduce incentives to take advantage of them. One effective result was the rehabilitation plans and gentrification efforts of those neighborhoods by the municipalities, thus increasing the vividness and the value property. Such investments and implementations could be done by the local administration. Banning and prohibiting has not been effective policies in conservation process.

4.0 Financial Resources

Conservation of cultural property is a difficult and costly process. The expenses of maintenance and repair has either to be generated by the property itself (rent, revenue, similar income, etc.), or an outside resource should back-up and supply the amount needed. The first option unfortunately is seldom exercised and most of the time outsourcing is unescapable.

Outsourcing of conservation of cultural heritage has of course a conceptual and legitimate base, which is that we, the inheritors of old civilizations, are responsible and even obliged to keep them in good condition and also transfer to the future generations. What I mean by "we" is the public by all means, central and local governments, NGOs, citizens, and all others.

For this purpose the government has enacted a law which allocates a certain percentage of the annual real estate tax to be spent for the preservation of cultural heritage, by the local administration. This has been a good start of financial aid to the conservation process but more resource has to be found.

The Ministry of Culture and Tourism is trying to give some help to the citizens for their preservation efforts but that is very limited in amount. Some quasi-public organizations like the "Mass Housing Authority" are involved in urban renewal and gentrification projects but

the implementation has aroused concerns and serious debates regarding the main goal of keeping the originality and paying respect to cultural heritage principles in essence.

In the country many of the archaeological sites are on privately owned estates, and this is a big problem since a huge amount of money is necessary to expropriate those lands. Another measure to acquire those lands is the "barter" instrument, where an equivalent piece of land is given to the owner in exchange for the archaeological parcel in question. The difficulty in this mechanism is of course the limited availability of similar value lands in the possession of the public authorities.

5.0 Conclusions

Turkey is a country where numerous cultures and civilizations have trodden on, left remains and traces of invaluable historic and architectural elements. In fact it is one of the rare countries which exhibit and mirror such a great variety of different cultures over a long historic time span. This brings an unattained richness of heritage inherited, but at the same time a burden and equal responsibility in the task of preserving them in proper manner.

When you look at the past of preservation and conservation processes in Turkey, you see that there has been a gradual but continuous development throughout a time of approximately fifteen decades. There is no need in criticizing or grading the overall performance of the country, but I want to point out some of the important problems or the failures in this context.

The administrators both at the national and local levels did not pay enough attention or gave importance for cultural heritage conservation. This has led and is still causing inadequate resource allocation for this field, in a comparative sense.

The people and the citizens of this land did not have the necessary respect and willingness of care, or consciousness for the inherited cultural properties, which led to a savage destruction and sometimes plundering of the valuable artifacts and treasures. The leaders and politicians of the country didn't introduce measures and mechanisms to prevent this destruction. Laws and regulations are quite adequate, and the technical expertise level of the country is well developed. The urgent need is a campaign of "awareness raising", "consciousness creating" among citizens, so that everyone believes in the value of the inherited heritage and behaves actively for this goal.

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The Preservation of Cultural Heritage in Germany: Legal, Administrative and Financial Aspects

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Dr. Werner Von Trutzschler studied law in Munich, and has a PhD in International Law. He is involved with international law firms and insurance companies. He has worked with the Bavarian Ministry of Education and the Bavarian State Conservation Office. He is secretary general of the German National Committee of ICOMOS.

Abstract

This paper discusses in particular the Legal Framework for protection of heritage in Germany along with its aspects of public participation, administrative framework and the financial incentives for the protection of heritage.

Keywords

Legislation, Monuments, Federation, Public Participation

1.0 The Legal Basis

The Federal Republic of Germany is a federal state made up of 16 autonomous states which have their own parliaments and governments. The responsibility for the exercise of state authority and the discharge of state functions is assigned by the **Grundgesetz (Basic Law = Constitution)** to these states (Länder) except as otherwise provided for or admitted by the Basic Law itself. Thus both legislation and administration including the execution of federal laws is **entrusted** in principle **to the states (Länder)**. In other words all competences are deemed to lie with the states unless otherwise specified.

Under this arrangement **legislation concerning cultural heritage** is passed both by the **Federation (planning and building laws)** as well as by the **Länder (laws for the protection and maintenance of cultural monuments)**. Within this broad outline the relevant legislation for the preservation and protection of monuments is the following. Town planning is regulated in the Federal Building Act. Essentially there are two levels of planning: the land-use or master plan as the preparatory plan and the building plan as the binding development plan.

The different heritage laws of the 16 German states contain basically the same provisions. They all give definitions of monuments and regulate the procedures for identifying a monument and then entering it in a list of monuments or a “book of monuments”, as the list is called in some states. The Bavarian Law for the Protection and Preservation of Monuments for example defines monuments as follows:

- (1) Monuments are man-made things or parts thereof from a past epoch whose preservation, because of their historic, artistic, urban design, scientific or folkloristic significance, is in the interests of the general public.
- (2) Built monuments are structures or parts thereof (including historic decorative details) from a past epoch which possess the significance listed in Paragraph 1, insofar as they are not covered by Paragraph 4. Movable objects can also be historic decorative details if they are an integral part of an original interior design or a comparable historic refurnishing or redesign. Gardens are also considered to be built monuments insofar as they fulfill the requirements listed in Paragraph 1.
- (3) Built monuments can also include more than one structure (historic district or Ensemble); every individual building in the /Ensemble /need not fulfill the requirements of Paragraph 1, if the townscape, square or streetscape as a whole is worthy of preservation.
- (4) Archaeological monuments are movable and immovable monuments which are or were in the earth and in general date from prehistorical or early historical times.

Definitions in the 16 different laws are similar and again, there are 16 different monument lists, as each state keeps its own list according to its own law. In some German states listing is a pre-condition for application of the appropriate provisions for protection; in other words, listing has a constitutive character as to the monument quality. In other German states listing has only a declaratory nature, meaning that the monument quality derives directly from the

definition laid down in the law. In both cases the listing is proof of the monumental quality of a building and as such is accepted by the different authorities. Unlike the protection systems in other countries, France being the classic example, there are no legal categories of monuments and there are no special regulations for monuments listed as UNESCO World Heritage. From a legal point of view all German monuments are equal. Especially in the practice of direct financing however, to say it as George Orwell, some monuments are more equal than others.

Besides individual monuments like historic buildings, the 16 German protection laws also contain regulations on archaeological monuments and on monument areas (ensembles) like historic districts. Unauthorized alterations or demolition of protected buildings can be fined on the basis of these laws.

In addition counties **and county-free municipalities** which have their own **legal powers in local matters** as self-governing authorities are competent to pass bye-laws based on federal and state laws (e.g. development and building plans).

2.0 The Administration

2.1 Decision making administrative authorities

Decision making administration in most German states is based on a **three tier structure** except for the city states Berlin, Hamburg and Bremen and some area states where it is based on a two tier structure. Three tiered structure has a **state ministry on top as the highest level authority**, an **administrative district on the middle level** and **counties and county-free municipalities** (i.e. bigger cities) **on the lower level**. In numbers: there are 16 states forming the Federal Republic of Germany, 22 administrative districts, 323 counties and 116 county-free municipalities. In the two tiered structure the middle level is omitted. Whereas on the ministerial, the top-level of administration competences are divided between different ministries there is a concentration of competences on the middle and on the lower level. Illustrating this taking the example of Bavaria, it means the highest authority for the protection of monuments is the Ministry of Culture and the highest building authority is the Ministry of Interior and there is no differentiation on the middle and on the lower level. The higher authorities have supervisory powers over the authorities beneath them.

The principle of concentration of competences is advantageous for the citizen as his partner is only one public authority where he can apply for different permits needed when e.g. planning to work on a protected historic building.

Decisions binding the citizen are taken by the lower administrative authorities. If the applicant objects to the decision taken he may appeal against the administrative act. If the lower administrative authority is not willing or able to change its decision pursuant to the appeal then the final decision is taken by the middle administrative authority (or in the two tier structure by the higher administrative authority). These procedures are regulated in a federal and in state administrative procedure laws. If the appeal proves unsuccessful the way is opened for another appeal this time to the administrative court.

2.2 Advisory expert administrative authority

In the administration of German conservation legislation, a distinction is generally made between *“Denkmalschutz”, the protection of monuments*, and *“Denkmalpflege”, the care for monuments*. The protection of monuments is assigned to the decision making administrative authorities whereas for the care of monuments in most states a specialized public authority, the *State Office for the Preservation of Monuments* under the supervision of the competent ministry is responsible.

This Office *serves* in a professional advisory capacity to both *other government bodies and the public* especially the owners of protected monuments. Its tasks include the *inventorization and registration of monuments* and sites , *review and guidance of restoration work* on all protected monuments through site visits and consulting reports, giving technical advice on matters of maintenance and restoration, *distribution of grants and loans*, approving expenditures on monuments for tax benefits , *research and publication work* etc.

Apart from these responsibilities the main task of these State Offices for the Preservation of Monuments is to *represent the public interest of protecting and preserving monuments in the planning and authorization* procedures both general and particular which are necessary under the protective and building legislation. Thus these offices have more or less the function of a political lobby run by the government. This is an exception as other public interests like the conservation of nature for which no such advisory authorities exist.

The State Offices for the Preservation of Monuments have to be consulted by the decision making administration in all procedures which may have an impact on protected monuments. This means the advisory expert authority must be consulted not only in procedures concerning a single monument but also in planning procedures referring to areas containing monuments. The lower administrative authority which always is the first to decide on a plan or request for a building permit or protective approval may not decide contrary to the opinion given by the State Office for the Preservation of Monuments. If it wants to deviate from the given opinion it has to submit the matter to the next higher administrative authority which then takes the final decision which may override the opinion of the State Office for the Preservation of Monuments.

Thus the administration of cultural heritage in most German states is structured on a two track system consisting of advisory expert public agencies on one hand and the decision making authorities on the other hand.

2.3 Administration of the Federation

The implementation of Federal laws is principally the responsibility of the states, except for activities attributed by the constitution to the Federation like to name the most important-foreign relations and defense; the Federal Administration lacks to a large extent an administrative substructure.

Concerning cultural heritage the Federation subsidizes investments for monuments of national importance (the *Federal Commissioner for Culture and the Media*) and for World

Heritage sites (Federal **Ministry of Transport, Building and Urban Development**). These grants are administered by the Federal Office of Administration (Bundesverwaltungsamt). This is a superior federal authority performing administrative tasks for different federal ministries. The Office employs about 2400 people and manages budgetary funds of around 7 billion Euros annually.

2.4 Administration of state owned monuments

Most German states have special administrations for the monuments owned by them. These administrations have different legal forms, in Thuringia for example this administration is a public foundation funded by the state whereas in Bavaria it is an agency or department under the supervision of the Bavarian Ministry of Finance.

To illustrate the tasks and the organization of such an administration again Bavaria is taken as an example. In Bavaria the **Bavarian Department of State-owned Palaces, Gardens and Lakes**, otherwise known as the Palace Department is responsible and manages 45 palaces, castles and residences as well as a number of historical gardens, some churches and other historical monuments and the Bavarian lakes. The predecessor of the Palace Department was founded in the 18th century as a division at the Bavarian Court. The objects taken care of include the Castle of Neuschwanstein and the Residences of Munich and Würzburg. Altogether over five million visitors are attracted by the monuments administered by the Palace Department.

The Palace Department has a staff of about 850 collaborators including specialists in restoration, art historians, building specialists and a garden department. The central department is responsible for personnel and budgetary matters, the properties with their numerous leased restaurants and function rooms, the lakes and the publicity. The Department has the function of the lower decision making administrative authority as far as its own monuments are concerned and it is not obliged to obtain expert opinions from the State Office for the Preservation of Monuments.

3.0 Participation of the Public in administrative procedures

Public participation i.e. **consultation of the public and of the individual citizen in the planning procedures** takes place for a first time during the drawing up of land-use plans and of building plans. The Federal Building law provides for the public notification of the public as early as possible i.e. as soon as the local authority has decided to draw up a plan. It has to inform the public about

- The general aims and purposes of the plan;
- The foreseeable effects of the plan and;
- Other possible solutions under consideration for the renovation and development of the planning areas.

The first public consultation is therefore performed before the draft of the plan is finalized. The local authorities can decide themselves on the means and ways of information. For non-

problematic planning procedures, the local authorities provide, usually through advertising in the press, the opportunity for a single discussion forum in the rooms of the administration. For extensive and significant or controversial planning procedures, civil assemblies are often convened, in which the planning is presented and discussed. Citizens' arguments in this consultation procedure are to be included in further planning considerations.

When drafting the plan the arguments put forward by the public have to be taken into consideration. As soon as the draft of the plan is finalized, a second formal public participation follows. The topic of this consultation is the draft plan, which must be publicly displayed. The display must be announced in advance. The draft plan must then be displayed for one month for public inspection together with an explanatory report or statement of reasons. The local authority must deal with the content of the comments and communicate the result of this review to the public. Should the local authority not follow the arguments of the public, it must submit these arguments to the next highest (middle) administrative authority which has to approve the plan.

For all **individual decisions and rulings** by an authority **which intervene in the rights of a person concerned, the person must be consulted**. This obligation results from the federal administrative procedure law and similar laws of the Länder and is also, to a certain extent, specially regulated in building and in heritage law. However, even when no explicit regulation is standardized there, the provisions of the administrative procedure laws take effect. Thus, for the decision about applications for a building contract, or for a permission in heritage law, for example, each neighbor of the property must be granted a hearing prior to the decision. For the registration of historic buildings or sites in a list of historic buildings or sites, the owner of the property must be granted a hearing if this registration has a constitutive effect.

Both planning and individual decisions are subject to **legal control by administrative courts**. Citizens affected in their rights can have building plans inspected by means of a direct judicial review of the norm or they can wait and see if an individual decision is taken against them or if an adverse ruling is issued on the strength of a building plan, before having these underlying statutes and plans inspected in a trial on the legitimacy of the individual decision ("incident-review"). Individual decisions which affect a citizen's rights (this can also be a neighbor for example), are examined by an administrative court after entering into legal action. Such legal action is conditional on the performance of administrative proceedings reviewing the objection, i.e. the citizen must always initially turn to the administrative authority which issued the decision objected to.

4.0 Financial aid for the preservation of monuments

4.1 Direct financial aid

Direct financial subsidies in the form of **non-repayable or repayable grants** are given for the restoration of monuments by the Federal Government, by the Länder and by district and local authorities, and of course also by the European Union.

4.2 Indirect financial aid through tax concessions

German tax law is federal law. However the revenues from most taxes are split between the federal government, the federal states and the local authorities, as is the case with the two most important taxes, namely turnover tax (VAT) and income tax. Other taxes are due in full either to the federal government or to the federal states. Basically, there is a different law for each tax and one law regulating taxation procedures (Abgabenordnung).

4.2.1 Income tax

72 % of the costs of rehabilitating a protected historic building (Herstellungskosten - building costs) can be deducted from taxes over a period of eight years (annually 9%) and the remaining 28% over a period of four years (7% annually). This is an advantage in comparison to non-protected or new buildings because normally building costs can be deducted at a rate of only two or 2 ½% per year, depending on the age of the building, over a period of 40 or 50 years compared to the ten-year deduction period for the rehabilitation costs of a monument.

4.2.2 Other taxes

Under certain conditions real estate tax and inheritance and donation tax can be reduced for monuments if the income from the property is consistently lower than its costs.

5.0 Conclusion

Monuments are man-made things or parts thereof from a past epoch whose preservation, because of their historic, artistic, urban design, scientific or folkloristic significance, is in the interests of the general public. When drafting the plan the arguments put forward by the public have to be taken into consideration. As soon as the draft of the plan is finalized, a second formal public participation follows. Direct financial subsidies in the form of **non-repayable or repayable grants** are given for the restoration of monuments by the Federal Government, by the Länder and by district and local authorities, and of course also by the European Union. The implementation of Federal laws is principally the responsibility of the states, except for activities attributed by the constitution to the Federation like to name the most important- foreign relations and defense; the Federal Administration lacks to a large extent an administrative substructure.

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Legal Framework of Protection of Monuments under Polish Law

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Prof. Kowalski Wojciech studied law at the Jagiellonian University in Cracow. He is a professor in civil law at the University of Silesia, Katowice (since 1995) and Head of the Department of Intellectual and Cultural Property Laws of this University.

He is one of the founders of ICOMOS International Committee on Legal, Administrative and Financial Issues, deputy chairman from 1998 to 2000.

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Abstract

Various legal instruments under the Polish law for the protection for Cultural heritage, various issue concerned and possible solutions are discussed in the following paper.

Keywords

Antiquity, Monument Conservator, Legal Instruments

1.0 Introduction

Before discussing the legal basis for protection of cultural heritage in Poland, the heritage that is protected in our country and the heritage protected in India should be differentiated. First of all, the fundamental part of the most ancient Indian heritage consists of stone buildings that could survive until now. The oldest Polish heritage comprised wood or wood-and-earth work structures, minute parts of which have survived under the ground level. Construction of stone buildings started in the 10th century AD. Nonetheless, stone was soon replaced by brick, which has become the basic construction material since then.

The second most important difference between cultural heritage protections in both countries is the fact that a large portion of the Polish heritage was destroyed, particularly during the Second World War. These irreversible losses have affected the contemporary Polish monument protection doctrine, which permits reconstruction of buildings that are particularly important for the Polish national identity. This was the basis for complete reconstruction of such edifices as the Royal Castle in Warsaw.

As far as the heritage protection concept is concerned, the basic rules and legal instruments are included in the Act on the protection of monuments and care of monuments. The title of the act itself shows that the tasks in this regard have been divided into protection and care. In general, the former includes obligations of the authorities, while the latter encompasses the duties of the owner or holder of the monument. Article 4 of the Act clearly states that protection of monuments consists particularly in public administration bodies taking measures aimed at “prevention of risks that may result in loss of the value of the monument (point 5) and “prevention of damage or misuse of monuments” (point 3), and finally, “control of the state of conservation and purpose of the monuments” (point 5). On the other hand, care of monument, which is performed by its owner or holder, consists particularly in ensuring conditions for “protection and maintenance of the monument and its surroundings in the best possible condition” and “using the monument in a manner that ensures preservation of its value” (Article 5 (2), (3), (4)).

These obligations indubitably refer to a monument defined in Article 3 point 1 of the Act. This provision defines monument as “an immovable or movable property, or parts or complexes thereof that are man-made objects or are related to human activity which are a testimony of a past age or event and whose preservation is in the interest due to its historic, artistic or academic value.” The former half of the text does not require any explanation. Undoubtedly, objects that can be classified as monuments include immovable or movable property and their parts or complexes that are direct or indirect products of human activity. However, some problems arise when the latter part is to be interpreted. The term “testimony of a past age or event” included there is certainly a statutory definition of “antiquity”, but unlike the first Polish legislative act of 1918 concerning monuments, which included a simple minimum age requirement of 50 years, it is not easy to interpret. If “a past event” might mean virtually any event that took place in the past, even recently, “a past age” is much harder to define. Thus, it seems that the only solution is to assume that this term should be interpreted literally regardless of the fact that terms such as “age” are disputable and their starting and ending points are difficult to determine, just like in the case of other terms that refer to periodisation. This means that a monument conservator who decides on including a monument in the

register will have to demonstrate that a specific object belongs to an age that has passed, i.e. a closed period of history. Similarly, the term “testimony” is to be interpreted literally because the legislative body has not defined if it refers to an “outstanding”, “significant” or “representative” testimony, or one that has been defined in some other way.

After the above issues have been solved, the object needs to be assessed with regard to its compliance with the criteria of historic, artistic or academic value. It can be done by providing a positive answer to at least one of the following questions as applicable to the type of the specific object: Does the specific object have any documentary value, and what exactly does it document, and, supposing its authenticity, to what extent? Does the specific object have any artistic value, and what does this value consist in? Does the specific object have any academic value, and, if so, what is its value for specific academic disciplines? Only after these questions have been answered, can the public interest in the preservation of a specific object be assessed in terms of its historic, artistic or academic value.

In addition, the Act includes in detail the terms and conditions of use of such monuments, various type of works concerning it, controls it, and legal instruments that make it possible to stop or to order them. Pursuant to Article 25 (1) of the Act, management of an immovable monument included in the register requires that the owner or holder has “conservation documents that determine the conservation status of an immovable monument and the possibility to adapt it taking account of the historical function and historic value of the monument” (point 1) and “an immovable monument conservation works programme that has been agreed with the Provincial Monuments Conservator and defines the scope and the manner of the works as well as the necessary materials and techniques” (point 2). If the holder of the monument submits a relevant application, “the Provincial Monuments Conservator shall present written conservation recommendations that define the manner of use of the monument, relevant security measures and conservation works, as well as the scope of permissible modifications that can be done to the monument” (Article 27 of the Act).

What is very important from the perspective of heritage protection is the further provision, i.e. the requirement of special permission from the Provincial Monuments Conservator for any important works in this regard. This particularly regards “performance of conservation, restoration or construction related to the monument included in the register” (point 1), “performance of construction works in the surrounding of the monument” (point 2), “performance of a conservation study of a monument included in the register”, “permanent relocation of a movable monument included in the register which violates the decoration of the interior where the monument is located that has been sanctioned by tradition” (point 7), “division of an immovable monument included in the register” (point 9), as well as “placement of technological devices, boards, advertisements and text on a monument included in the register, subject to Article 12 (1)” (point 10), and finally “initiation of other actions that could result in the violation of the substance or a change to the appearance of a monument included in the register” (point 11).

Works performed under a permission and compliance with monument protection and care regulations are subject to control by the Provincial Monuments Conservator. Pursuant to Article 38, the Provincial Monuments Conservator has at their disposal a number of instruments that allow them to perform their function effectively. For example, they are

permitted to “enter premises if there is a reasonable suspicion of destruction or damage to a monument” (paragraph 3 (1)), “check compliance of all actions undertaken with regard to monuments included in the register (...) with the scope or terms and conditions set out in the permit and with approved documentation” (paragraph 3 (3)), or finally, “demand spoken or written information necessary for determining the actual state with regard to scope of control” as well as to demand production of relevant documents and provision of any data (paragraph 3 (4) and (5)). Such control may be enforced in special situations because “the Provincial Monuments Conservator may apply to the local police commander for assistance if it is necessary to perform control measures”, and the local police commander is obliged to provide such assistance (paragraph 4 (a) and (b)). After the control procedure has been completed, the Provincial Monuments Conservator may issue follow-up recommendation to the natural person subject to control or the manager of a controlled organisational unit (Article 40 (1) of the Act), and in applicable cases, they have to notify the police, the prosecutor's office or the court of an offence or a misconduct (Article 41 of the Act).

Other outcomes of control may include the decision to stop works performed without the permission or in a manner not compliant with the scope, terms and conditions defined in the permit, which applies to conservation, restoration and plain construction works concerning a monument included in the register (Article 43 of the Act), and a monument not included in the register, if the monument meets requirements for inclusion in the register (Article 46 of the Act).

As mentioned above, the Provincial Monuments Conservator may also issue a decision with an obligation to perform conservation or construction works concerning a monument if such works are necessary due to the risk of destruction or severe damage to the monument (Article 49 (1) of the Act). They can also order the substitute performance of such necessary works and then secure them with judicial mortgage on a property owned by the State Treasury in this regard (Article 49 (3) and (4) of the Act).

When discussing these provisions, we should also mention numerous penal provisions that also support protection of a monument against harmful modifications. It is indubitably the purpose of Article 108 (1), pursuant to which anyone who destroys or damages a monument shall be liable to imprisonment for a term from three months to five years, or the provision of Article 109a, pursuant to which anyone who forges or modifies a monument for trade purposes is liable to a fine, restriction of liberty, or imprisonment for a maximum term of two years, or finally the provision of Article 110, which imposes a fine or restriction of liberty on an owner or a holder of a monument who fails to properly secure it against damage and destruction. The act also includes provisions that impose penalties for the monument holder's failure to act, but there are two more articles that should be first pointed to. Pursuant to Article 117, a person who performs maintenance, restoration or construction works, or even just conservation or architectural studies concerning a monument included in the register or construction works in its surrounding without permission or against terms and conditions of a permit is punishable by fine. The latter provision is Article 118, which makes it possible to impose a fine for placement of a technological device, boards, advertisements or text on a monument included in the register.

A discussion of legal instruments that can be used by monument conservators cannot omit court decision that serve for their practical execution, and express their interpretation. The case law is quite abundant, but the only decisions that should be mentioned here concern the colour of a building and prohibited exchange of window woodwork, as well as placement of advertisements. In the former case, the court has decided that “the issue of colour of the building is a change to the appearance of the monument, which requires a permit from the Provincial Monuments Conservator pursuant to Article 26 (1) point 11 of the Act (...) (a provision discussed above – W.K.). As far as the woodwork is concern, the court has determined that “the owners of living premises in a building included in the register of monuments replaced the window woodwork that formed the glazing of the loggia with a PVC window without profiles. What is more, historic balcony woodwork that separated loggia from the room had been removed and replaced with modern sliding door. The said works were performed without permission required by the law. In such a situation, the decision that obliged the owners of the premises to restore the monument to the best condition possible by removing the PVC window as the closure of the loggia on the back side of the building and restoring the balcony woodwork replaced by the arbitrarily installed sliding door according to the plan agreed with the Provincial Monuments Conservator complies with the law.” The evidence in the case shows that the woodwork that had been removed has not survived. The only solution is to reconstruct woodwork on the basis of existing original woodwork at the remaining loggias in the building maintaining the form, division, proportion, profile, and historic material. In the general conclusions in the justification for the decision that ordered the restoration of the original woodwork, the court has stated that “in the case of historic buildings, the only solution to the issue of window replacement permissible from the perspective of monument conservation is reproduction of the features of the original woodwork, i.e. the shape, proportion, division, and size of original window lights and profiles. The material that makes it possible to reconstruct the characteristics of the window is wood. PVC windows without profiles do not meet these specific requirements and differ from the original model.”

As far as the last issue is concerned, the court has stated that “placement of a large advertisement in the premises included in the register of monuments significantly changes its appearance and the fact whether the said advertisement is fixed or placed temporarily, on scaffolding erected due to maintenance works concerning the building. Thus, placement of such advertisement requires a relevant permit from the monuments conservator”.

Having completed the review of the legislation regarding monument protection, we should state that they form a coherent legislative construct that unambiguously defines rights and duties of both owners and public administration authorities. It should be added that it primarily comprises the Provincial Monuments Conservators, who have been mentioned many times and act on behalf of the state provincial authorities (voivodes). The appellate body is the General Monuments Conservator who is a Deputy Minister of Culture and National Heritage. Their decisions are controlled by administrative courts.

The above shows that the state monuments conservation service has a number of opportunities for action in case a monument is threatened due to works regarding it. The current regulations include regulations that define the scope of permitted works, regulations

that permit their inspection, regulations that authorise monuments conservators to remove improper products thereof and products of illegal works by restoring the previous state, and finally regulations that allow monuments conservators to impose penalties and defining them. Of course, it goes without saying that all those regulations also concern the protection of the aesthetic appearance of the monuments. Thus, the law itself is not an issue, but the effectiveness of actions taken by monuments conservation service is an issue because the law provides the monument conservation service with all relevant instruments.

While discussing monuments protection, we should notice that modern architecture classified under the monument category may additionally and simultaneously protected by protecting the authors' rights under the Copyright Act. In this case, the applicable legal instrument is the right to integrity, which may be used by living architects, their heirs, or architect associations. As far as the Polish law is concerned, the basic provision is included in Article 16 of the Copyright Act, which protects the right to integrity as part of protection "not limited in time and not subject to waiver or disposal of copyright by the author". The right, which is set out in the said provision as the author's right to "integrity of the form and the content of the work", authorises them to oppose to any changes, modifications, "improvements", etc. to such works as a building that may deform its original form. It should be clearly stressed that the above mentioned author's right to oppose changes is not affected by their results and any opinions on them, e.g. a common judgement that those changes were positive, or at least favourable to the perception or use of the building. The only thing that matters is the author's opinion, due to the romantic principle that a work is an extension of the author's personality, so the whole of it testifies about the author, and thus no other person can interfere in its form or content. Only in some cases interference in a building, even without consulting the architect, are allowed and will not constitute the basis for a claim concerning violation of integrity. These include actions, primarily technical in character, that are necessary due to specific reasons without any reasonable grounds for the author to oppose them. Typical examples include conservation procedures.

If these works have been mentioned, it should be explained that the Act on the protection of monuments and care of monuments defines conservation and restoration separately. Pursuant to Article 3 points 6 and 7 of the Act, conservation works are "measures aimed at securing and preserving the substance of the monument, preventing destructive processes and documenting such measures", while restoration works mean "measures aimed at exposing artistic and aesthetic qualities of the monument, including, if there is such need, supplementing or reconstructing parts thereof and documenting these measures".

Conclusions

It is worth adding that the products of the said works themselves may be protected under the above mentioned copyright regulations. This is due to the fact that according to the contemporary art conservation doctrine, virtually any works of that kind interfere in the work and affect its aesthetic qualities, thus the conservator-restorer will always “be the creator of new aesthetic qualities in the work being restored by revealing, adding or removing its elements”. This results from the simple fact that modern art conservation „is not simply a technical matter”, but also a „number of creative choices”.

End notes:

¹ Act of 23 July 2003 on the protection of monuments and care of monuments, Dz.U. 2003, No. 162, item 1568, last amended, Dz.U. 2009, No. 97, item 804.

¹ Decision of the Provincial Administrative Court (WSA) in Warszawa of 18 May 2006, files No. I SA/Wa 1628/05, LEX No. 232229.

¹ Decision of the Provincial Administrative Court (WSA) in Warszawa of 2 June 2006, files No. I SA/Wa 1543/05, LEX No. 232927.

¹ Decision of the Provincial Administrative Court (WSA) in Warszawa of 7 July 2006, files No. I SA/Wa 2217/05, LEX No. 271575.

¹ Act of 4 February 1994 on copyright and related rights Dz. U. 1994, No. 24, item. 83, hereafter referred to as “the Copyright Act”.

¹ Act of 4 February 1994 on copyright and related rights Dz. U. 1994, No. 24, item. 83, hereafter referred to as “the Copyright Act”.

¹ The complete text reads: “...art restoration is highly skilled, professional work involving complicated and controversial exercises of judgement and, in particular, is not simply a technical matter”. E. van de Wetering: *Intimidatie tactiek Goldreyer werkt in Nederland niet*. NRC Handelsblad, 9 December 1991, p. 6 in: C. Forder: *Who’s Afraid of Red, Yellow and Blue III?* International Journal of Cultural Property 1994, Vol. 3, No. 2, p. 90.

¹ Words by T. Dreier, who considers art conservation a work subject to copyright if it “involves a sufficient number of creative choices”. T. Dreier: *Restoration and Moral Right Under Comparative Law*. in: *La restauration des objets d’art. Aspects juridiques et éthiques*. Zürich 1995, p. 164.

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Heritage Management in Sri Lanka: In Legal, Administrative and Financial Perspective Over 125 Years

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Abstract

Archaeological heritage in Sri Lanka is defined under the headings of ancient monument, antiquity, archaeological heritage and monument. The paper elaborates the legal provisions and organizations for protection of heritage in Sri Lanka. The main issues currently identified in the management of the archaeological heritage in Sri Lanka is under the lack of human resources and lack of consistent financial resources. There are several instances where the protection of religious monuments experienced positive and negative influences backed by political pressures. Sri Lanka could be identified as one of the nations that have used heritage for sustainable development of the country.

Keywords

Heritage, Protection, Conservation, Management, Sustainable Development

1.0 Definition of Heritage protected under the Law

According to the Antiquities Ordinance of Sri Lanka following definitions could be identified related to the Archaeological Heritage.

1.1 "ancient monument" means any monument lying or being found in Sri Lanka which dates or may reasonably be believed to date from a period prior to the 2nd day of March, 1815, and includes :-

- (a) any other monument which has been declared to be an ancient monument by an Order published in the Gazette under section 16, and
- (b) any tree in respect of which an Order under section 17 has been published in the Gazette.

1.2 "Antiquity" means which date or may reasonably be believed to date from a period prior to the 2nd day of March, 1815:-

- (a) any ancient monument, or
- (b) any of the following objects lying or being found in Sri Lanka,

statues, sculptured or dressed stone and marbles of all descriptions, engravings, carvings, inscriptions, paintings, writings, and the material whereon the same appear, all specimens of ceramic, glyptic, metallurgical and textile art, coins, gems, seals, jewels, jeweller, arms, tools, ornaments, and all other objects of art which are movable property.

1.3 "archaeological heritage" means that part of the material heritage of mankind in respect of which archaeological methods provide primary information and includes all vestiges of human existence and places relating to all manifestations of human activity, abandoned structures and remains of all kinds (including subterranean and underwater sites), together with all the portable cultural material associated with them.

1.4 "monument" means any building, or other structure or erection, or any tomb, tumulus or other place of interment, or any other immovable property of a like nature or any part or remains of the same or any other site where the material remains of historic or prehistoric human settlement or activity may be found; and includes the site of any monument and such portion of land adjoining such site as may be required for fencing or covering in or otherwise preserving any monument.

2.0 System of Legal protection of Heritage

Heritage in Sri Lanka are protected through the Antiquities Ordinance No. 9 of 1940 and its subsequent amendments by Acts No. 2 and 22 of 1955 and Act No. 24 of 1998. According to the legal provisions the following sections could be identified as important.

2.1 Property in Antiquities

No antiquity shall, by reason only of it being discovered in or upon any land in the ownership of any person, be or be deemed to be the property of such person: provided that such person

shall be deemed to be interested in such antiquity in accordance with the provisions of this Ordinance. Every ancient monument which on the date on which this Ordinance comes into operation is not owned by any person or the control of which is not vested in any person as trustee, incumbent or manager, shall be deemed to be the absolute property of the State. All undiscovered antiquities (other than ancient monuments), whether lying on or hidden beneath the surface of the ground or in any river or lake or within the territorial sea of Sri Lanka, shall be deemed to be the absolute property of the State, subject to the provisions of this Ordinance.

2.2 Discovery of Antiquities - Excavations

No person shall excavate for the purpose of discovering antiquities, whether on land belonging to himself or otherwise, except under the authority of a license issued by the Director-General of Archaeology.

2.3 Discovery of Antiquities Otherwise than Under A License to Excavate

Every person who discovers any antiquity otherwise than under the authority of a licence to excavate-

- 2.3.1** shall forthwith report the discovery to the nearest peace officer and, if it is practicable so to do, deliver the antiquity to such officer and obtain a receipt therefore from such officer, and
- 2.3.2** shall within seven days of the discovery, report the discovery, together with the prescribed particulars relating thereto, to the Government Agent of the district in which, the discovery was made.

2.4 Ancient Monuments

The Minister may by Order in writing declare that any specified monument which has existed or is believed to have existed for a period of not less than hundred years, shall, notwithstanding that such monument does not or is not believed to date to a period prior to the 2nd day of March 1815, be deemed to be an ancient monument for the purposes of this Ordinance.

Where it appears to the Minister that any tree, whether growing in State land or any other land, is of such historical or archaeological importance, that it is necessary in order to secure the preservation or protection of such tree that the provisions of this ordinance relating to ancient monuments should apply to such tree, the Minister may, by order in writing, declare that such tree shall be deemed to be an ancient monument for the purposes of this ordinance. Where it appears to the Minister that any ancient monument situated on any land other than State land is in danger of destruction or removal, or damage from neglect or injudicious treatment, and that it is in the public interest that such monument should be protected, he may, subject to the provisions of section 19, by order published in the Gazette, declare such monument to be a protected monument; and from the date of the publication of such order, the monument to which the order relates shall be a protected monument for the purposes of this ordinance.

2.5 Prohibition or Restriction of Building, Mining, in Vicinity of Certain Monuments

Regulations may be made prohibiting, or restricting subject to the prescribed conditions, the erection of buildings or the carrying on of mining, quarrying, or blasting operations on any land within the prescribed distance of any ancient monument situated on State land or any protected monument. The distance now stands as 300 yards from the boundary of the Monument.

2.6 Archaeological Reserves

The Director-General of Archaeology may-

2.6.1 with the approval of the Land Commissioner, or if approval is refused by the Land Commissioner,

2.6.2 with the approval of the Minister to whom the subject of State lands is for the time being assigned, declare, by notification published in the Gazette, any specified area of that land to be an archaeological reserve for the purposes of this Ordinance.

2.7 Export of Antiquities

No person shall, except upon a license in the prescribed form issued by the Director-General of Archaeology, export any antiquity from Sri Lanka. (2) For the purposes of application of provisions of the customs ordinance, antiquities shall be deemed to be articles the exportation of which is restricted by enactment or legal order.

2.8 Impact Assessment of Proposed Development Projects

Whenever any development or industrial scheme or project is proposed by the Government or other institution or person entailing the use, encroachment or submergence of any land falling within the inventory prepared under law, or any land as may be prescribed, such scheme or project shall not be approved or permitted until after a report; is submitted by the Director-General of Archaeology, as to the effects the implementation of such scheme, or project may have upon such land or any antiquities within it.

2.9 Penalty for Destruction of Antiquity

Any person who wilfully destroys, injures, defaces or tampers with any antiquity or wilfully damages any part of it, shall be guilty of an offence under this Ordinance and shall on conviction after summary trial before a Magistrate be liable to a fine not less than twenty five thousand rupees and not exceeding two hundred and fifty thousand rupees or to imprisonment of either description for a term not less than two years and not more than five years or to both such fine and imprisonment.

2.10 Violation of Law cited as unbailable Offence

Notwithstanding anything to the contrary in the Code of Criminal Procedure Act, No. 15 of 1979 or any other written law, no person charged with, or accused of an offence under this ordinance shall be released on bail.

2.11 Evidence

In a prosecution for an offence under this Ordinance, a certificate to be signed by the Director-General and to the effect that the object described therein is an antiquity, shall be admissible in evidence without further proof, and shall be prima facie evidence of the facts stated therein.

3.0 Government organizations and Administrative Provisions for Protection of Heritage

There are several government organizations responsible for the protection of heritage in Sri Lanka. They are:-

- Department of Archaeology
- Central Cultural Fund
- National Museum Department
- Department of National Archives
- Department of Cultural Affairs
- Galle Heritage Foundation
- National Physical Planning Department
- Urban Development Authority
- Universities

3.1 Department of Archaeology

Department of Archaeology of Sri Lanka is the apex institution and chief regulatory body for the management of archaeological heritage in the country.

3.2 Central Cultural Fund

Central Cultural Fund operated as an organization for preserving the ancient grandeur of Sri Lanka for the future generation through sites under the license provided by Department of Archaeology.

3.3 Department of National Museum

National museums are established in Sri Lanka for the collection, preservation and exhibition of objects of scientific, historical or artistic interest and for the maintenance of libraries of books and other documents relating to subjects and matters of such interest.

3.4 Department of National Archives

Department of National Archives is committed to the systematic management and conservation of public records as a part of National Cultural Heritage by preparing rules and regulations relating to the accrual of Public Records and unique Private Collections as permanent deposits. It is also responsible for the management and preservation of traditional (Palm leaf and Papers) and non-traditional (Digital) government records basing on relevant stipulated rules and regulations. It also receive Newspapers and Publications for legal deposit in terms of the relevant laws, making facilities to retrieve information from its holdings for use by the government for its administrative processes and for research purposes by the public.

3.5 Department of Cultural Affairs

Department of Cultural Affairs has the responsibility in uplifting the Sri Lankan Culture by the preparation and implementation of programmes for preservation, propagation and expansion of Literary Arts and Cultural activities in order to maintain the Sri Lankan Identity.

3.6 Galle Heritage Foundation

Galle Heritage Foundation is geared to make the World Heritage Living City of Galle Fort to a cultural tourist centre of excellence by conserving Galle Fort as a historic cultural city centre and a site of archaeological importance and developing it to be a cultural tourist location of excellence.

3.7 National Physical Planning Department

National Physical Planning Department is established to formulate national physical policies, plans and strategies and to ensure and monitor the implementation of such national policies and plans through regional and local plans with the object of promoting and regulating integrated planning of economic, social, physical and environmental aspects of land and territorial waters of Sri Lanka. Accordingly a national physical plan may be prepared in conformity with the national physical planning policy, with respect to land, whether there are or are not buildings thereon, with the general object of promoting and regulating the development of land, of securing proper infrastructure, amenities and conveniences, of conserving the natural and built environment or architectural, historic or aesthetic interest and natural beauty.

3.8 Urban Development Authority

Urban Development Authority was formulated to prepare development plans and to promote, implement and regulate development activities with a view to achieving the position of a financially independent and globally admired creator of full-fledge sustainable urban centres. They also are empowered to restore historical buildings with the aim of improving urban city standards.

3.9 Universities

There are 15 government owned universities in Sri Lanka; out of which 6 have academic Departments of Archaeology. There are two post graduate institutions directly related to the subject of Archaeology. The main aim of these academic institutions is to provide the necessary human resources for the protection and management of heritage. Over and above the universities also take the responsibility of providing archaeological services in the country by way of taking the responsibility of archaeological research excavations, conservation of monuments and the management of archaeological monuments and sites. The best example is that the Sri Lanka Department of Archaeology has handed over one of their archaeological reserve for the **procuring or furnishing the archaeological investigations, archaeological and architectural conservation, infrastructure facilities, landscaping, layout, maintenance, security, public relation, and construction and administration services at the Raja gala Archaeological Reserve.**

4.0 Archaeological and Conservation Practice including Adaptive Re-Use of Heritage

Archaeological and Conservation Practice including Adaptive Re-use of Heritage of Sri Lanka is carried out under the subsections explained below.

4.1 Exploration and Documentation

The objectives of Exploration and Documentation is -

- To identify the archaeological heritage of Sri Lanka through exploration
- To document movable and immovable archaeological properties in Sri Lanka
- To implement the provisions of the Antiquities Ordinance
- To implement the provisions of the cultural properties act
- To protect the archaeological heritage of Sri Lanka

These objectives are achieved by

- conducting special and urgent explorations
- declaring archaeological reserves
- declaring archaeological reserves and protected monuments
- preventing the destruction of antiquities
- conducting archaeological impact assessment surveys
- collecting geographical information with regard to archaeological sites and monuments and prepare maps
- conducting oceanic explorations
- planning the exploration of the ancient irrigational heritage and to ensure its protection
- Conducting Special and Urgent Explorations

Since it is of utmost importance to identify archaeologically significant locations to carry out activities such as conservation, exhibition, research or excavation, ancient sites and monuments are documented in detail and reports are compiled, in addition to making reports of sites that need to be reported urgently owing to urgent needs.

4.2 Archaeological Excavations

The archaeological excavations in Sri Lanka are carried out under the following sections.

- Prehistoric Excavations
- Prehistoric Research Excavations
- Early Historical Period
- Historic Excavations
- Rescue or urgent excavations (E.g.: excavations carried out after evaluating damages to archaeological objects)
- Excavations carried out prior to conservation of Sacred sites and Monuments

After completing the archaeological excavations post excavation analyses are conducted to analyze the excavated material. This will be followed by writing reports - compilation of archival reports and interpretation reports. On completion of the excavation reports, excavated materials are handed over to the Museums for further research, exhibition and storage.

4.3 Epigraphy and Numismatics

A large amount of Epigraphy and various types of coins circulated in ancient Sri Lanka are scattered in various areas of the island. The identification and registration of all archives and coins, taking stumpage of archives, preserving and maintenance of field data and facsimiles collected, reading of archives, conducting research, preparation of basic work required to declare results of research and forwarding necessary recommendations and data to relevant sections for the protection of archives are being carried out.

4.4 Archaeological Museums and Information Centres

Archaeological Museums and Information Centres are established to provide facilities for the public to gain knowledge and entertainment by following the principles of conservation, preservation, documentation and maintenance of antiquities of cultural value discovered by explorations, excavations and by communicating truly and actively to the public to gain the knowledge, education and entertainment by means of preserving the objects, events and activities of the past.

4.5 Architectural Conservation

Architectural Conservation of Sri Lanka is carried out for the conservation and systematic presentation of protected monuments and site monuments within archaeological reserves. The activities are commenced by the preparation of inventories of the architectural remains, preparation of Conservation Proposals. There after conservation works are implemented and finally conservation reports are prepared. New constructions in order to establish museums, information centres, common amenities etc. within the Archaeological Reserves and Lands are also managed, implemented and supervised.

4.6 Chemical Preservation

Application of chemical and physical treatment to ancient paintings, sculpture and artefacts in order to minimize their deterioration due to natural or other causes, is the major role of the Chemical Conservation. By such treatment, it is expected to prolong the lifespan of ancient paintings, sculpture and artefacts and preserve them for posterity.

4.7 Conservation of ancient paintings, coloured sculpture and objects

The activities consists of conservation of antiquities, chemical conservation of immovable monuments, documenting and taking photographs of ancient paintings, coloured sculpture and objects, documentation of antiquities to be conserved, preparation of replicas of antiquities, copying mural paintings, maintenance of sites with conserved paintings by observing their deterioration condition from time to time and maintenance of movable and immovable antiquities by periodical observation for their deterioration condition.

4.8 Maintenance

Safeguarding and maintaining archaeological monuments and archaeological reserves are also being carried out. Demarcation of archaeological reserved lands and their maintenance, provision of necessary display boards at the archaeological sites and providing infrastructure facilities, maintenance of buildings, essential maintenance work of protected monuments belonging to individuals and issue of trade license for selected archaeological sites are the main activities carried out under maintenance.

4.9 Public Services

Inculcating awareness in the general public on various archaeological activities and research work carried out by the technical divisions and on the management of archaeological heritage is the main aim of public services. Promotion of public understanding and awareness on archaeological heritage, providing infrastructure to researchers, issue of permits to persons to take photographs and for video recording of archaeological sites and monuments, giving publicity to archaeological activities through electronic and printed media, conducting workshops to advocate school children and public officers and sale of publications are the main activities carried out under this service.

4.10 Project Monitoring & Evaluation

Preparation of annual action plan after obtaining project proposals, approval of project proposals / indication of expenditure and making them available for implementation, performing follow ups on projects and obtaining interim progress reports on them, furnishing information on projects when required, by ministries, departments and individuals, organization and coordination of meetings of the Archaeological Advisory Board, staff officers, staff officers and other progress review meetings of all types are the activities carried out by the project monitoring and evaluation.

4.11 Adaptive Re-Use of Heritage

Adaptive reuse refers to the process of reusing an old site or building for a purpose other than which it was built or designed for. In Sri Lanka adaptive re-use of heritage sites and buildings are being practiced. Followings could be cited as examples for adaptive re-use of heritage in Sri Lanka.

Dutch Museum in Colombo

The two storied large building reflecting the features of a 17th century Dutch Urban house was built by Thomas Van Rhee, The Dutch Governor of Sri Lanka from 1692- 1697 as his official residence. During the British period in 1796 this building was used as an arms store of army hospital, police training centre, Pettah post office and telecommunication centre. This building was preserved by a special preservation committee with the assistance of Netherlands government in 1977 and opened for the public as Dutch museum by the Department of National Museums. It has displayed over 3000 museum objects related to the Dutch who ruled coastal areas of Sri Lanka. (1658-1796)

Galle Maritime Archaeological Museum

The Maritime Archaeological Museum is housed in the Old Dutch East India Company VOC Warehouse which was restored under Sri Lanka – Netherlands Cultural Co-operation Program of the Royal Government of Netherlands. This is the only museum that showcases the marine biological and anthropological aspects of the Southern coast of Sri Lanka, which exhibits marine artefacts that are found during underwater expeditions.

Old Colombo Dutch Hospital

The Old Colombo Dutch Hospital is considered to be the oldest building in the Colombo Fort area dating back to the Dutch colonial era in Sri Lanka which was restored and converted into a heritage building and a shopping and dining precinct.

Royal Palace of the Kandyan Kingdom

The remains of the Royal Palace of Kandy is the residence of the last king of Kandyan Kingdom, Sri Wickrama Rajasinghe (1797 – 1814) houses the museum of the Department of Archaeology of Sri Lanka. Antiquities found in the central province are on display in this museum.

Galle Fort Hotel Building

A Dutch mansion and warehouse with 18th century doors and windows on the building's façade along with a grand Palladian colonnade, a ceremonial entrance arch which was rescued from neglect and decay, and lovingly and painstakingly restored in 2003 has being converted to a boutique hotel.

Historical Mansion Museum

A grandeur colonial Dutch house of the UNESCO world heritage site of Galle has been converted to a museum which is named as historical mansion museum. This museum believed to be the privately owned largest museum in Sri Lanka, initiated by Abdul Gaffer, the creator.

5.0 Management and Maintenance Issues towards Protection of Heritage

5.1 Human Resources

Since the establishment of the Department of Archaeology in 1890, the Department has faced the biggest challenge in the needs of the human resources in the management of archaeological heritage in Sri Lanka. According to the present cadre position in the Department of Archaeology of Sri Lanka out of 37 approved cadre positions in the higher management level 30 are vacant. Out of 629 middle management level cadre positions 100 are vacant. During a recent workshop held in Sigiriya it was found that 776 professional posts are needed to be created in the Government Sector for the better management of the heritage. Out of these 776 posts 750 posts are needed directly to the Department of Archaeology. It had been not yet identified about the need in the Semi-Government and private sector for the management of heritage. The Central Cultural Fund, the principle institution which is the implementation arm of the Department of Archaeology already has 207 professional posts in their permanent cadre while there are more than 100 young archaeologists working as temporary recruits. In recent times the Sri Lanka Council of Archaeologists (SLCA) – only incorporated professional body of archaeologists in Sri Lanka - has taken steps to create an “Archaeological Service” in order to provide the necessary human resources to the Government Institutions to manage the heritage in Sri Lanka. Although the

efforts have faced many obstacles, the management council of the SLCA is trying its best to fulfil its obligations to meet this challenge. The next challenge faced by the SLCA is to ascertain the human resource requirement in the semi-government sector and to create relevant cadre posts within the identified institutions.

Government of Sri Lanka through its higher education policy has taken adequate steps to provide an adequate number of qualified professional archaeologists to the labour market. But in order to harness the best possible interested young students from the primary education it has yet to take appropriate steps, introduce the values of heritage to the school curriculum although the subject of history now have been included with some aspects of archaeological heritage.

Although there are two institutes specially formulated for the capacity building of professional Archaeologists, Conservators and Heritage Managers, the lack of foreign exposure has hindered the recognition of them in the international field of archaeology. As such the challenge that is faced now is to adopt a method of elevating the professional standard to meet the international standard by sending them for long-term and short-term training in international centres and also to have international collaboration programmes with international training centres for capacity building of professionals who work in the fields of heritage management.

5.2 Financial Resources

The protection of Heritage should be considered as a collective responsibility of general public. This responsibility should be acknowledged by providing adequate funds for the effective management. As such it is the duty of the Government to ensure that adequate funds are available for management of cultural heritage. As such the Government of Sri Lanka has been providing funds for the management of heritage through its annual budget. But over the years it has always been felt that the financial allocations provided in each year has not being consistent resulting major sets backs in the efforts in protecting heritage. As such it is necessary to advocate the government to set apart a percentage in GDP for the provision of Heritage Services.

In addition, in order to have sustainable funding strategies, it is necessary to establish separate funds to directly receive financial assistance from local as well as international donors and to secure funds through cultural tourism and use such funds exclusively for the aspects related to management of heritage. The creation of the Central Cultural Fund could be identified as a positive step, but the authority of the fund to collect financial resources should extend beyond its current limits which confines to the archaeological remains within the Cultural Triangle.

Over and above the authorities shall ensure that economic benefits through cultural tourism to be provided to local communities by creating opportunities and allowing the local communities to harness the benefits without hindering the values.

6.0 Politics of Heritage towards Protection of Heritage

Since a large number of Sri Lankan Heritage consist of religious monuments, influences created by religious owners of religious monuments backed by the political pressure plays a significant role in the protection of heritage. The influence could be identified as positive as well as negative. The positive influence could be cited as the religious influence which always operates as catalyst for obtaining necessary government financial resources for the protection of heritage. The negative influence created by the politics could be identified as most damaging. Over the years several unethical developments and restorations have taken place in several sites and monuments which are in contrary with the archaeological strategies. For example the development that has been continuously carried out by the high priest within the buffer zone of the World Heritage site of Dambulla has now triggered the danger of listing the site in the Danger List. On the influence created by the high priest of the Buddhist monuments in the World Heritage Site of Polonnaruwa one of the Ancient Stupa, Kiri Vehera was re-plastered and white washed. Recently conserved Abhayagiriya Stupa in the World Heritage Site of Anuradhapura was about to be re-plastered by an order given by His Excellency the former President neglecting all possible dangers pointed out by the professionals could be diffused as he was defeated in early 2015 presidential election. As such, it could be stated that these positive and negative political influences will continue to happen in future of which the task of adhering or defusing it will continue to remain with the professionals.

7.0 Heritage for Sustainable development

The establishment of Central Cultural Fund in 1980 to carry out the archaeological activities in the Cultural Triangle in Sri Lanka could be identified as a significant land mark in the field of heritage for Sustainable Development. According to the Annual Statistical Report of Sri Lanka Tourism 2012, number of foreign visitors visiting the Cultural Triangle was 93,884 in 1986 and 592,980 in 1992. The revenue collected from the sale of entrance tickets to the Foreign Visitors was LKR 14.7 million in 1986 and LKR 1,330.7million in 2012. Although most of the sites in the Cultural Triangle except Sigiriya and the museums are free to Domestic Visitors, 650,524 Domestic visitors have been visited in 2012 with a revenue of LKR 18.12 million. These statistics are taken from five major sites namely, World Heritage Sites of Sigiriya, Polonnaruwa, Anuradhapura and Galle and one of other historical site of Kataragama. According to the statistics Accommodation Capacity (Rooms) in Graded Establishments in ancient cities in 2012 was 2,901 out of 15,510 in all regions which represent 18.70%. Out of these capacity occupancy rate in ancient cities was 66.5. Since the total arrival of foreign visitors to Sri Lanka in 1983 was 230,106 and in 2012 was 1,005,605, it could be observed that 40.80% in 1986 and 58.97% in 2012 of total arrivals has visited the Cultural Triangle Sites.

8.0 Conclusion

All these statistics provides the evidence of contributions of heritage to the sustainable development in Sri Lanka. The revenue earned by the Central Cultural Fund has provided employment for 3,131 staff of the institutions which is direct employment and the investment of finances for the excavation, conservation, maintenance and other activities has gained indirect employment by the way of material supply, contracting etc. The establishment of new hotels, guest houses, restaurants, souvenir shops, etc has also contributed to the upliftment

of local economy in the heritage sites. The manufacture of local textiles, food, fruits has been uplifted there by providing a direct return to the local community.

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Which is more effective: General rules or specific decisions? Some remarks prompted by the Swedish heritage legislation

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Abstract

This essay is about legal technique. Is it more efficient to regulate protection of the cultural heritage by issuing more or less detailed decisions, or is it sufficient to issue rules in general wording? The choice of technique is not devoid of importance. With general rules the effect can be made much far-reaching, but the interpretation may be more contentious. Individual decisions demand much office work, but may in consultation with parties concerned result in good implementation. Some pros and cons are discussed here, illustrated by the Swedish heritage legislation, where general rules have a long standing.

Keywords

Legal Protection, Heritage Legislations, Ancient Remains

1.0 Introduction

In many countries legal protection demands specific decisions, identifying item for item which special restrictions apply, how large an area is covered and other aspects of how the item is to be preserved. These decisions may appear under different terms: designation, listing, classification, inscription, protective order, notification or registration. In some jurisdictions the method is another: protection in more general terms, resting on the legal texts in themselves, and leaving to landowners, land users and the authorities to interpret what is under protection. Is such a "lax" attitude defensible and reliable?

In the hierarchy of legal norms, second to the constitution, rules adopted by the parliament are normally paramount. Rules made by the parliament – acts is the usual term in the English language – may, however, in many cases be supplemented by rules issued by the government. Norms issued by the government are usually called regulations (or similar in other languages).

Acts of parliament are by nature rather general in their contents. Less so regulations made by the government, but to an extent they too are general. They are meant to govern private individuals, corporations or sub-governmental agencies, but they do so with wide strokes of the brush, formalised in general wording. There may be limits as to how specific the directions from parliament or government may be. Under e.g. the Swedish Constitution (Chapter 12 Section 2 of the Instrument of Government), parliament is expressly forbidden to make decisions as to how a public agency should determine the exercise of public authority regarding a private individual, a local government or the application of law. In principle, the same applies to the national government, but parliament may have delegated the use of public authority in matters, for instance, of issuing permissions under a certain act to the government. The government, in its turn, may have delegated its powers to a subordinated agency. If the latter is the case, the government must not intervene when that agency tries a delegated issue, unless that is specifically provided for.

Governing a state by rules (an alternative is, of course, always the power of the purse) is therefore subject to a modicum of generality. Neither the parliament nor the national government will normally clamp down on an individual and tell him what to do in a specific issue. The general rules will have to be interpreted by organs of the state appointed for that purpose, be they agencies of the government or independent courts-of-law. If specific direction is desirable, then a decision applying the general rules will be taken.

Heritage issues are not intrinsically different from other matters of governance. To protect the heritage legally, i.e., with recourse both to general rules, and/or specific decisions, is therefore a question of what is practical under the overriding rule-of-law doctrine of the state in question.

In the Swedish context both general rules and individual decisions are used as methods to point out what is protected either on land, under water, or in individual buildings or groups of buildings. Which are the prerequisites, advantages and drawbacks of the two basic methods? Can they fruitfully be combined?

2.0 Sweden's heritage legislation

The Swedish Cultural Heritage Act (CHA) could be seen as a fairly updated piece of legislation. Its year of publication in the Swedish Official Journal is 1988 (SFS 1988:950), and in 2013 it underwent an overhaul, which was proclaimed to be an overall revision – at least linguistically – but which in reality touched very little of the substance of the legislation. At its year of adoption, in 1988, a modern approach was the ambition to engulf many of the physical aspects of the heritage. Protective provisions for archaeological remains were followed by rules for the architectural heritage, to which were added a chapter for church buildings and other ecclesiastical objects. The movable heritage was also included in a chapter regulating export of old objects, soon to be followed by another chapter, devoted to procedures for return of illegally exported objects under a European Union Directive, applicable in Sweden as of 1994. So the act could be said to reflect a modern, "holistic" attitude to several aspects of the Swedish heritage.

As a matter of fact, however, the 1988 act was not much more than an amalgamation of older acts and regulations, which were now brought under one "hat". The former act on ancient remains, now with some changes brought into the CHA as its 2nd Chapter, had its principal predecessors dating as far back as 1666, when a royal decree was issued proclaiming that nobody "whoever it was, should from this day" break down or destroy any castle, house, fortress, fortification, or cairn regardless how small it may seem, or standing stones with any runic inscription, but let them be in their place, together with any mounds of earth or gravesites of former kings and noble persons. Nor should any church, monastery or cloister and the graves or monuments belonging thereto undergo any willful destruction. All officers of the kingdom and the clergy were instructed to spread the message of the proclamation and to watch over its obedience.

For this obedience it was necessary to amass and disseminate knowledge of the remains of past. Royal efforts to this effect had already been underway for almost a century, mainly through the clergy, and under the inspiration and leadership of appointed officials, carrying the imposing title of antiquaries of the realm (The title is still used for the director general of the National Heritage Board). So using this legal technique of protecting the heritage in rules of general applicability was not unrealistic even from its inception. The same technique has been used ever since in successive acts and regulations.

3.0 Ancient remains (archaeological heritage)

Today the Chapter 2 of the CHA effects protection in the following fashion. First, there are rather sweeping general criteria:

"Ancient monuments and remains are the following *traces of human activity in past ages*, having resulted from *use in previous times* and having been *permanently abandoned*."

A few comments on what is in italics: Traces means that it is physical remains that the law concerns itself with, and they should have resulted from the use of humans in past ages/previous times. Paleontological remains are thus not covered. Until recently, there was no specific time requisite, but now it has been set at the year 1850 AD. This will be further explained later. The final general criterion is that the traces could be considered to have been

permanently abandoned. Thus, if there is still a current use of something that appears ruined, it does not qualify for protection as an ancient remain.

Then there are further general criteria, which, however, go along the road to specification. The following categories of remains are covered.

1. graves, funeral buildings and burial grounds, and also churchyards and other cemeteries,
2. raised stones and also stones and rock bases with inscriptions, symbols, marks and pictures, as well as other carvings or paintings;
3. crosses and memorials;
4. places of assembly for the administration of justice, cult activities, commerce and other common purpose;
5. remains of homes, settlements and workplaces and cultural layers resulting from the use of such homes or places, and similarly remains from working life and economic activity;
6. ruins of fortresses, castles, monasteries, church buildings and defence works and of other buildings and structures;
7. routes and bridges, harbour facilities, beacons, road markings, navigation marks and similar transport arrangements, as well as boundary markings and labyrinths;
8. Wrecks.

Outside of these eight categories, formations of nature associated with ancient customs, legends or noteworthy historic events are also protected.

The reader will have discovered several of the remains mentioned already in the royal proclamation of 1666, so there is continuity in the Swedish legislation. It should be noted that category 6, encompassing all abandoned buildings and structures, seems very wide: the minute remains of a croft, a smitty or lumberjock's hut seem to be covered. Before 2014 the legislation had sought to limit this implication by insertion of the word "remarkable" before building and structures, in order to exempt what is too commonplace or insignificant. After many years of rather unproblematic application, the margin of appreciation was still considered too wide, so in the 2013 overhaul the word was eliminated and a general time limit was put in place. Protection does not apply to remains that can be assumed to have come into existence – or have been wrecked – after 1850.

It does not mean that younger remains are impossible to protect. But the legal technique will have to change. A new provision makes it possible for the administration to issue an "ancient remains order", which will then protect the remain as if it were older. From general to the specific in other words. To make a decision of this kind, the administration will have to consult the landowner and other concerned parties, primarily the local government. The decision can be appealed, but comes into force immediately.

Legal protection for ancient remains means that any land use that will – or might – affect the remains, including covering it up, will have to be scrutinized by the administration. An application may be refused, but even if the administration issues a permission, it will usually

be on condition that archaeological investigation take place and that special measures should be taken to prevent the remain from being damaged.

The list of categories of remains 1 – 8 is rather concrete, but it seems certain that there will be many cases where it might be difficult to assess if a planned project may affect an ancient remain, by just looking at the legal text. However, assistance is available. There is public web access to a register of ancient remains, digitally kept by the National Heritage Board of Sweden.

http://www.fmis.raa.se/cocoon/fornsok/search.html?utm_source=fornsok&utm_medium=block&utm_campaign=ux-test. The register contains some 1.1 million entries, representing approximately 700,000 sites. There are also official maps which will provide further guidance. In addition, if a project might affect an ancient remain, the developer is duty bound to always first consult with the administration. This consultation is still free of charge, in sharp contrast to what applies to applications for other projects that may negatively influence the environment.

So Sweden now operates both techniques for its ancient remains/archaeological heritage: the general rules, and in some – probably for a long time very few – individual decisions in the form of protective orders. Was this change necessary and has it strengthened protection?

The time limit was put there to clarify to landowners, developers and to an extent also the public at large what is and what is not a protected remain. Instead of brooding upon the question whether something in the ground that could be the ruins of a building is "remarkable" or not, the question to be dealt with is now: are these ruins older than from 1850? To my mind this question is no easier to resolve than the previous one. How can anyone but a trained historian or archaeologist credibly verify such an examination? Very little, if anything, has been achieved in the way of clarity. Either question will have to be dealt with recourse to the knowledge available, i. e. the register of ancient remains and the official maps. It could be noted that neither the register, nor the map system, are resources mentioned in the legislation. It probably would have more practical to introduce a more specific mentioning of these resources in the legal text.

There is, however, a worse problem concerning the clarity of the legislation. Protection of an ancient remain does not cover just what can be observed as the remain in itself. Protection also applies in an area around it large enough to preserve the remain and to afford it adequate scope with regard to nature and significance. The extent of this area is very seldom defined beforehand. Thus, the area has to be determined ad hoc whenever something may affect its vicinity. Not surprisingly, landowners and land users may have another opinion than the heritage authorities. To my mind, it is strange that a legislative reform aiming at greater clarity concentrates only on the time aspect, and does not even mention the geographic uncertainty. In many countries, this adjoining area has been delimited in more certain terms: so and so many metres from the remain, but this has never been discussed in Sweden.

Ancient remains are not only difficult to assess on the ground or on the seabed. There is also the fact that we do not know all of them. Many new finds are made every year. One advantage with the general approach taken in the Swedish act is that protection of newly found remains works automatically. No decision needs to be taken to afford them protection.

Works that turn out to affect previously unknown remains must be stopped, and the find has to be reported to the administration.

4.0 Churches (ecclesiastical heritage)

Churches, monasteries and cloisters were subjects for protection already under the 1666 royal proclamation. In fact, as early as in 1571 there were rules placing under control unwanted changes to churches. Also this legal situation has prevailed until today. With the reformation, which in Sweden took place in 1527, the church became an established Lutheran church, firmly placed under the King. This meant that the clergy were appointed by the King, or later the government, and that changes made to church buildings or other ecclesiastical objects were monitored by the state. Only in 1951 legislation was the permitted individual freedom of religion adopted. However, the church still did not have independence from the state. After many years of deliberation, including efforts to solve the riddle as to who legally was the owner of church property, the new millennium saw this independence coming into being. One of the questions to be resolved at this "divorce" or "changed relationship" as the official term is, was how the state could maintain control of church heritage, although the church had now become the formal owner and decision making within the church was independent of the state. The solution came in the way of continued legal regulation of the church heritage, in exchange for which the state committed itself to make a rather substantial annual economic contribution to the upkeep of church buildings.

The present rules consist of the following elements: Church buildings to which the CHA is applicable are buildings which have been consecrated for the services of the Church of Sweden before 1 January 2000 and on that date were owned or managed by the Church of Sweden or any of its organisational parts. A church site is an area surrounding a church building, connected with the function and environment of the building and not constituting a cemetery (Chapter 4 Section 2 of the CHA).

However, not all church buildings and sites are under protection. Protection is afforded to church buildings erected and church sites constituted before the end of 1939. It consists of a duty not to alter them in any significant way without permission from the administration. In the case of a church building permission must always be obtained for demolition, relocation or structural changes of the building, and also for interference with or alteration of its exterior and interior including permanent fittings and artistic decorations, and also for alterations to its colour scheme. In the case of a church site, permission is always required for enlargement of the site and for the erection or significant alteration of buildings, walls, portals or other permanent features of the site.

So here is another example of how an important part of the Swedish heritage is regulated only by the general rules of the act. In comparison with the rules for ancient remains, however, it is much easier to interpret and understand to what objects the rules apply. It is well known, especially to the church management, which churches or sites were created or constituted before 1940. In 2008 the count of protected churches stopped at 2905.

But are there no churches or sites from later days that possess heritage value and therefore would deserve protection? Yes, and in these instances the act opens up a possibility for the

administration to take a decision in the individual case to achieve the same kind of protection. In 2008 the number of specially protected churches amounted to 83.

To complete the relation of protection for ecclesiastical heritage it should be briefly mentioned that burial sites, whether managed by the church or secular, are under the same basic rules: If they existed before 1940 they are automatically protected directly by the act; if younger a special decision can be taken.

Church movables are also protected. Protection here is afforded to any ecclesiastical heritage item that is on the list of church heritage inventory, which every parish has to keep. Once on the list, such items must not be disposed of, deleted from the list, repaired, altered or relocated without permission from the administration. The administration has the power to inspect and add items to the list.

5.0 Historic buildings (architectural heritage)

Buildings, groups of buildings, parks and areas of prominence from a historic perspective, can also be protected, but here Sweden operates a system with individual designations. There are now approximately 2400 buildings which are covered by designations and protective orders under the CHA.

6.0 Conclusion

Swedish heritage legislation seems to do good with general rules, up to a point. One prerequisite for the system to work is good knowledge and documentation to illustrate the general rules. Then it is up to the owner, user or manager to take this knowledge into consideration and then respect the rules.

It is, of course, possible to say that the system would be safer, if an individual decision was taken regarding all protected sites and objects. Then the concerned owners etc. would really know what protection applies to their property. But with so many ancient remains – 700000 sites – and so many protected churches – close to 3000 – it would take an enormous bureaucratic machine to administer all those decisions. And with regard to ancient remains, the paper machine would still not be able to reach all those remains that are still unknown.

However, I am dodging the original question: which system is more effective? I have to admit that answering this one is well beyond my scope. It would involve an enormous investigation of the state of the heritage in several jurisdictions, using one or the other system. And in order to compare one would also have to invent a scale of balances, where the weights would consist of information available on the heritage, general level of education, economic resources and many other factors that would make an evaluation more than mere guesswork. It is, perhaps, wishful thinking that such a study could be conducted. In the meantime, we would have to resort to the kind of reasoning that I have tried to lead in this paper.

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The Legal Framework for Philippine Heritage Preservation

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About:

Ms. Lucille Karen Malilong Isberto is the head of the Executive Council of the Committee on Monuments and Sites of the National Commission for Culture and Arts in Manila, Philippines. She is also concurrently, the deputy Director of project Laya, at Ateneo School of Government, Ateneo de Manila University. She holds degrees in law and economics from the University of the Philippines. She has been an executive council member of the Committee on Monuments and Sites, National Commission for Culture and Arts for 3 years and was a trustee of ICOMOS Philippines for 2 years. She is an independent practitioner.

Abstract

Paper discusses the legal framework for Philippine heritage Preservation, presenting two controversial cases in which the Court of law had occasion to interpret the legal aspects of Heritage protection in Philippines. It stresses on the need for a deeper look at the laws covering cultural heritage in Philippines and suggests the necessity of imparting Cultural heritage education right from the basic schooling so that they start appreciating Filipino culture at the earliest possible part of their lives.

Keywords

National Cultural Treasures, Cultural Properties, Standards of Conservation, Incentives

1.0 Introduction:

The Philippines is a Southeast Asian country. Its history is marked by colonization by Spain and the United States of America. Its laws reflect this history. The earliest laws protecting heritage, for example, were passed during the American colonial period.ⁱ

2.0 Protection under the Constitution

The Philippine Constitution has several provisions recognizing how important cultural heritage is.ⁱⁱ Section 2 of Republic Act No. 7356 or the “Law Creating the National Commission for Culture and the Arts” (NCCA) states that “Culture is a manifestation of the freedom of belief and of expression and is a human right to be accorded due respect and allowed to flourish.” Section 7 of the same law considers it the duty of every Filipino to preserve and conserve the Filipino historical and cultural heritage and resources.

In recognition of the cultural diversity of the country and its colonial history, Philippine Constitution expressly recognizes the cultural heritage of indigenous peoples. It provides that, “The State shall recognize, respect and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions and institutions. It shall consider these rights in the formulation of national plans and policies.”ⁱⁱⁱ

To implement this Constitutional provision, the Philippine Congress enacted Republic Act No. 8371 or the Indigenous Peoples Rights Act. The validity of this law has been upheld by the Philippine Supreme Court. The reason for the “radical” nature of this law was explained by one of the justices in his concurring opinion as follows: “When Congress enacted the Indigenous Peoples Rights Act (IPRA), it introduced radical concepts into the Philippine legal system which appear to collide with settled constitutional and jural precepts on state ownership of land and other natural resources. The sense and subtleties of this law cannot be appreciated without considering its distinct sociology and the labyrinths of its history. This Opinion attempts to interpret IPRA by discovering its soul shrouded by the mist of our history. After all, the IPRA was enacted by Congress not only to fulfill the constitutional mandate of protecting the indigenous cultural communities' right to their ancestral land but more importantly, to correct a grave historical injustice to our indigenous people.”^{iv}

3.0 Protection under the Cultural Properties Preservation and Protection Act

Before Republic Act No. 10066 or the National Cultural Heritage Act of 2009 was passed, Republic Act No. 4846 or the “Cultural Properties Preservation and Protection Act”, enacted in 1966, and as amended by Presidential Decree No. 374, was the main law that protected cultural heritage. While this law did not define “cultural heritage, it defined “cultural properties”, “antiques”, “National Cultural Treasures”, “Historical Sites”, among others.

- 3.1 “Cultural properties” are “old buildings, monuments, shrines, documents, and objects which may be classified as antiques, relics, or artefacts, landmarks, anthropological and historical sites, and specimens of natural history which are of cultural, historical, anthropological or scientific value and significance to the nation; such as physical, anthropological, archaeological and ethnographical materials, meteorites and tektites; historical objects and manuscripts; household and agricultural implements; decorative articles or personal adornment; works of

art such as paintings, sculptures, carvings, jewellery, music, architecture, sketches, drawings, or illustrations in part or in whole; works of industrial and commercial art such as furniture, pottery, ceramics, wrought iron, gold, bronze, silver, wood or other heraldic items, metals, coins, medals, badges, insignias, coat of arms, crests, flags, arms, and armour; vehicles or ships or boats in part or in whole.”^v

- 3.2 “Important cultural properties” are “cultural properties which have been singled out from among the innumerable cultural properties as having exceptional historical and cultural significance to the Philippines, but are not sufficiently outstanding to merit the classification of ‘National Cultural Treasures.’”^{vi}
- 3.3 A “National Cultural Treasure” is “a unique object found locally, possessing outstanding historical, cultural, artistic and/or scientific value which is highly significant and important to this country and nation.”^{vii}
- 3.4 A “historical site” is “any place, province, city, town and/or any location and structure which has played a significant and important role in the history of our country and nation. Such significance and importance may be cultural, political, sociological or historical.”^{viii}

The Cultural Properties Preservation and Protection Act provided for a procedure for the registration of cultural properties by the National Museum. The Director of the National Museum was given the task of undertaking a census of the important cultural properties of the Philippines, to keep a record of their ownership, location, condition, and to maintain an up-to-date register of the same.^{ix} The Cultural Properties Preservation and Protection Act also provided for a procedure for designation of a cultural property as a National Cultural Treasure or as important cultural property.^x Section 4 of Presidential Decree No. 260, as amended by Presidential Decree No. 1505, provides that “The National Museum and the National Historical Commission are hereby vested with the right to declare other such historical and cultural sites as National Shrines, Monuments, and/or Landmarks, in accordance with the guidelines set forth in R.A. 4846 and the spirit of this Decree.”

The Supreme Court had occasion to interpret the Cultural Properties Preservation and Protection Act in the case of *Dean Jose Joya vs. PCGG*.^{xi} In this case, Dean Joya and other concerned citizens claimed that, as Filipino citizens, taxpayers and artists deeply concerned with the preservation and protection of the country's artistic wealth, they have the legal personality to restrain respondents, Executive Secretary and Presidential Commission on Good Government (hereafter, “PCGG,” the government agency mandated with recovering the ill-gotten wealth of deposed President Ferdinand Marcos, his family, and his cronies) from acting contrary to their public duty to conserve the artistic creations as mandated by the 1987 Constitution, particularly Article XIV, Sections 14 to 18, on Arts and Culture, and Republic Act No. 4846. Eighty-two (82) Old Masters Paintings and antique silverware seized from Malacañang (the presidential palace) and the Metropolitan Museum of Manila were alleged to be part of the ill-gotten wealth of the late President Marcos, his relatives and cronies, and were to be auctioned off. Petitioners anchored their case on the premise that the paintings and silverware are public properties collectively owned by them and by the people in general to view and enjoy as great works of art. They alleged that with the unauthorized act of PCGG

in selling the art pieces, petitioners have been deprived of their right to public property without due process of law in violation of the Constitution.

The Supreme Court said that they had no personality to bring the suit. It also said that the issue was moot and academic as the auction was over by the time the Supreme Court ruled on it. Still, this case is significant as it interprets what cultural properties are. The Supreme Court held:

“This Court takes note of the certification issued by the Director of the Museum that the Italian paintings and silverware subject of this petition do not constitute protected cultural properties and are not among those listed in the Cultural Properties Register of the National Museum.

We agree with the certification of the Director of the Museum. Under the law, it is the Director of the Museum who is authorized to undertake the inventory, registration, designation or classification, with the aid of competent experts, of important cultural properties and national cultural treasures. Findings of administrative officials and agencies who have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect but at times even finality if such findings are supported by substantial evidence and are controlling on the reviewing authorities because of their acknowledged expertise in the fields of specialization to which they are assigned.”^{xii}

The second case is *Manila Prince Hotel v. GSIS* ^{xiii} decided in 1997. The Filipino First Policy enshrined in the 1987 Constitution, i.e., in the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos, was invoked by petitioner in its bid to acquire 51% of the shares of the Manila Hotel Corporation (MHC) which owned the historic Manila Hotel.

The controversy arose when respondent Government Service Insurance System, a government agency, pursuant to the privatization program of the Philippine Government decided to sell through public bidding 30% to 51% of the issued and outstanding shares of respondent MHC. The winning bidder, or the eventual "strategic partner," was to provide management expertise and/or an international marketing/ reservation system, and financial support to strengthen the profitability and performance of the Manila Hotel. In a close bidding, only two (2) bidders participated: petitioner Manila Prince Hotel Corporation, a Filipino corporation, which offered to buy 51% of the MHC or 15,300,000 shares at P41.58 per share, and Renong Berhad, a Malaysian firm, with ITT-Sheraton as its hotel operator, which bid for the same number of shares at P44.00 per share, or P2.42 more than the bid of petitioner.

The Supreme Court ruled in favor of the losing bidder and gave it the right to match the bid of the Malaysian group. It reasoned that the Manila Hotel is part of the Philippine national patrimony. In reaching this conclusion, it cited a book written by Beth Day-Romulo. It held:

“In its plain and ordinary meaning, the term patrimony pertains to heritage. When the Constitution speaks of national patrimony, it refers not only to the natural resources of the Philippines, as the Constitution could have very well used the term natural resources, but also to the cultural heritage of the Filipinos.

Manila Hotel has become a landmark — a living testimonial of Philippine heritage. While it was restrictively an American hotel when it first opened in 1912, it immediately evolved to be truly Filipino. Formerly a concourse for the elite, it has since then become the venue of various significant events which have shaped Philippine history. It was called the Cultural Centre of the 1930's. It was the site of the festivities during the inauguration of the Philippine Commonwealth. Dubbed as the Official Guest House of the Philippine Government it plays host to dignitaries and official visitors who are accorded the traditional Philippine hospitality.” (Ibid.)

The case does not mention that Manila Hotel was registered in the National Museum or that it was recognized as a historical landmark by the National Museum or the National Historical Institute. Republic Act No. 4846 is not even cited in the main decision.

4.0 Protection under the National Cultural Heritage Act

Despite such exuberant statements in the Constitution and the NCCA law, cultural heritage, popularly exemplified by built heritage structures, was not preserved in the way advocates would have wanted. The demolition of the Jai-alai Building in Manila in 15 July 2000 prompted heritage advocates to demand a law with “more teeth.”^{xiv}

The Jai-Alai Building was designed by Welton Becket, an American architect who designed the residences of Hollywood stars as well as the Los Angeles airport. It opened in 1940 and was the home of “the game of a thousand thrills” and the meeting place of Manila’s socialites.^{xv} It survived the bombardment of Manila in World War II but Manila City Mayor Lito Atienza who did not think that the building could be adaptively reused as the city’s Hall of Justice. In an interview, he was quoted as saying: “That building has been housing criminals, [purse-] snatchers and pickpockets and even deteriorated into a casbah. It would not work as a new justice building if we kept the facade because people would remember the game-fixing and cheating; instead of the dignity that befits a hall of justice. It just wouldn't blend.”^{xvi}

Heritage advocates claimed that existing laws on built heritage were not sufficient to protect Philippine cultural heritage and that they did not provide penalties that would sufficiently deter potential violators of the law. They argued that a building or site that had not been declared as a National Treasure, a National Landmark or an Important Cultural Property should still be preserved. On 26 March 2010 or almost ten years after the demolition of the Jai-alai Building, Republic Act No. 10066 or the National Cultural Heritage Act of 2009 (hereafter, the “National Cultural Heritage Act”) was signed into law by President Gloria Macapagal-Arroyo. The Cultural Properties Preservation and Protection Act, however was not expressly repealed by this law.

The National Cultural Heritage Act retained the categories for declaring and classifying heritage. These are: National Cultural Treasure, Important Cultural Property, World Heritage Site, National Historical Shrine, National Historical Monument, and National Historical Landmark.

It introduced innovations such as incentives for preservation. Section 36 thereof states:

“SEC. 36. National Heritage Resource Assistance Program. – The Commission may provide financial assistance in the form of a grant to historic, archaeological, architectural artistic organizations for conservation or research on cultural property. No grant made pursuant to this Act shall be treated as taxable income.”

Section 18 of the National Cultural Heritage Act provides for heritage agreements between the NCCA and private owners of cultural properties with regard to the preservation of such properties. Matters to be covered by a heritage agreement would include: (a) Public access to the property; (b) Value of the encumbrance; (c) Duration of the servitude of the property; (d) Restriction of the right of the owner or occupant to perform acts on or near the place; (e) Maintenance and management of the property; (f) Provision of financial assistance for the conservation of the property; and (g) Procedure for the resolution of any dispute arising out of the agreement.

Section 49 of the National Cultural Heritage Act increased the penalties for violation of the law to a fine of not less than Two Hundred Thousand Pesos (P200,000.00) or imprisonment for a term of not less than ten (10) years, or both, upon the discretion of the court. This is a huge jump from the fine of not more than Ten Thousand Pesos (P10,000) or imprisonment of not more than two (2) years or both, found under Republic Act No. 4846.

More than the incentives and the higher penalties, however, the most significant change the National Cultural Heritage Act introduced was the concept of “presumed” Important Cultural Property and the power of cultural agencies to issue a cease and desist order. Section 5 of the National Cultural Heritage Act states that:

“Section 5. Cultural Property Considered Important Cultural Property. - For purposes of protecting a cultural property against exportation, modification or demolition, the following works shall be considered important cultural property, unless declared otherwise by the pertinent cultural agency:

Unless declared by the Commission,

- (a)** Works by a Manlilikhang Bayan;
- (b)** Works by a National Artist;

Unless declared by the National Museum,

- (c)** Archaeological and traditional ethnographic materials;
Unless declared by the National Historical Institute,
- (d)** Works of national heroes;
- (e)** Marked structure;
- (f)** Structures dating at least fifty (50) years old; and

Unless declared by the National Archives,

- (g)** Archival material/ document dating at least fifty (50) years old

The property owner may petition the appropriate cultural agency to remove the presumption of important cultural property which shall not be unreasonably withheld.”

This means that the owners of covered property will have to petition the proper authority to remove the presumption that the property is an Important Cultural Property. Thus, the owner

of a fifty-year old house, for example, will have to petition the National Historical Commission of the Philippines (NHCP) to declare that the property is not an Important Cultural Property. If the owner does not, and demolishes the house without the NHCP declaration that it is not an Important Cultural Property, then the owner could be in violation of the law.

Section 25 of the National Cultural Heritage Act states that:

“SEC.25. Power to Issue a Cease and Desist Order. When the physical integrity of the national cultural treasures or important cultural properties are found to be in danger of destruction or significant alteration from its original state, the appropriate cultural agency shall immediately issue a Cease and Desist Order ex parte suspending all activities that will affect the cultural property. The local government unit which has the jurisdiction over the site where the immovable cultural property is located shall report the same to the appropriate cultural agency immediately upon discovery and shall promptly adopt measures to secure the integrity of such immovable cultural property. Thereafter, the appropriate cultural agency shall give notice to the owner or occupant of the cultural property and conduct a hearing on the propriety of the issuance of the Cease and Desist Order. The suspension of the activities shall be lifted only upon the written authority of the appropriate cultural agency after due notice and hearing involving the interested parties and stakeholders.”

Under the National Cultural Heritage Act, one who seeks to stop the demolition of a heritage structure that has not been declared as a National Cultural Treasure, an Important Cultural Property or a National Historical Landmark could ask a cultural agency to issue a cease and desist order. In theory, there was no need for a declaration by the National Museum or the NHCP that the property is a National Cultural Treasure, an Important Cultural Property, or a National Historical Landmark or to go to court for a heritage structure to be protected. A cultural agency could issue the cease and desist order and the person about to demolish a heritage building would have hold off plans to do so.

To the disappointment of heritage advocates, the National Cultural Heritage Act did not save buildings that were presumed Important Cultural Property. September 2014 was dubbed as the month of the “heritage massacre.” Admiral Hotel, a structure that was at least fifty (50) years old, was demolished. Even the Army and Navy Club, a National Historical Landmark, was gutted.^{xvii} Poor coordination between the cultural agencies was blamed and a lot of finger-pointing ensued in the aftermath. What happens if a person refuses to heed the cease and desist order? How can such an order be enforced?

Aside from the demolition of heritage structures, there are other problems related to heritage preservation. Among these are the overlapping jurisdictions of the NCCA, the National Museum, and the NHCP. Under Sec. 13 of the NCCA Law, the NCCA has the power to “regulate activities inimical to preservation/conservation of national cultural heritage/properties.” Under Republic Act No. 8492 or the National Museum Act of 1998, the National Museum is tasked with the duty to implement and enforce Presidential Decree Nos. 260 and 374, among other laws. The National Museum also has the power to supervise restoration, preservation, reconstruction, demolition, alteration, relocation and remodelling of immovable properties

and archaeological landmarks and sites. Under Republic Act No. 10086, the NHCP has the power to regulate activities pertaining to the preservation, restoration and conservation of historical property or resources. Thus, the National Museum and the NHCP can declare a single heritage structure as a National Cultural Treasure and a National Historical Landmark. What happens when these government agencies do not agree on what to do with that heritage structure? An illustration of this problem is the case of *Knights of Rizal v. DMCI Homes, Inc. and DMCI Project Developers, Inc.*^{xviii} now pending before the Supreme Court. The NCCA and the National Museum both argue that the condominium tower built by the respondents behind the Rizal Monument, declared by the National Museum as a National Cultural Treasure and by the NHCP as a National Monument, mars the vista of the Rizal Monument and should be demolished. The NHCP claims that it has no power to regulate the vista. Until the Supreme Court decides or Congress passes an amendatory law to remove the overlapping jurisdictions, confusion will reign.

Moreover, there are no clear Philippine standards or guidelines on conservation. Section 15 of the National Cultural Heritage Act states that “The appropriate cultural agency shall approve only those methods and materials that strictly adhere to the accepted international standards conservation.” What exactly does this mean given that there are various principles of conservation found in different countries and that some of these contradict each other? To address this, the NCCA is currently leading efforts to come up with a Philippine Charter for Heritage Conservation to determine how internationally recognized principles of conservation apply in the Philippine setting.

Republic Act No. 7160 or the Local Government Code gives the authority to cities and municipalities to craft zoning ordinances. What happens if a city or municipality refuses to do so despite the identification of a heritage zone by the National Museum or the NHCP? There is currently no baseline data on the level of awareness of local government officials on heritage conservation and whether or not local government units have programs on cultural heritage. At present, the NCCA is piloting Project Busilak, a community-based cultural mapping program that seeks to assist local government units to come up with the inventory of cultural heritage required under the National Cultural Heritage Act as well as to encourage the community to develop a better appreciation of their local heritage. It is a start but it will be a while before enough meaningful data is gathered, analyzed, and interventions designed to ensure that local government units fulfil their mandate under Section 16 of the Local Government Code. This provision is the General Welfare Clause and it states that, within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture.

5.0 Conclusion

All these show the need for a deeper look at all the laws covering cultural heritage including the charters of various government agencies that deal with culture and the arts. Structural reforms are required to ensure that persons with the right competencies in heritage conservation are hired by the concerned government agencies. Most importantly, cultural heritage should be truly made part of the basic education system so that Filipino children start appreciating Filipino culture at the earliest possible part of their lives. That may be the best

way for Filipinos to start caring for cultural heritage. Perhaps if they understood how valuable cultural heritage is, they might be more protective of the same.

End Notes:

ⁱ The Philippine Legislature, for example, passed Act No. 2494 in 1915 appropriating funds for a national monument and an adjacent park to honor the heroes who fought in the Revolution against Spain.

ⁱⁱ The pertinent sections of Article XIV (Education, Science and Technology, Arts, Culture, and Sports) of the Constitution provide:

“Sec. 14. The State shall foster the preservation, enrichment, and dynamic evolution of a Filipino national culture based on the principle of unity and diversity in a climate of free artistic and intellectual expression.

Sec. 15. Arts and letters shall enjoy the patronage of the State. The State shall conserve, promote and popularize the nation's historical and cultural heritage resources, as well as artistic creations.

Sec. 16. All the country's artistic and historic wealth constitutes the cultural treasure of the nation and shall be under the protection of the State which may regulate its disposition.

Sec. 17. The State shall recognize, respect and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions and institutions. It shall consider these rights in the formulation of national plans and policies.

Sec. 18. (1) The State shall ensure equal access to cultural opportunities through the educational system, public or private cultural entities, scholarships, grants and other incentives, and community cultural centers, and other public venues.

ⁱⁱⁱ Article XIV, Section 17, Constitution.

^{iv} Separate Opinion of J. Puno in *Cruz v. Secretary of Environment and Natural Resources, et al.*, G.R. No. 135385. December 6, 2000.

^v Sec. 3, par. a, Rep. Act No. 4846.

^{vi} Sec. 3, par. b, Rep. Act No. 4846.

^{vii} Sec 3, par. c, Rep. Act No. 4846.

^{viii} Sec.3, par. I, Rep Act No. 4846.

^{ix} Sec. 5, Rep. Act No. 4846.

^x Secs. 6-7, Rep. Act No. 4846.

^{xi} G.R. No. 96541, August 24, 1993, 225 SCRA 568.

^{xii} Ibid.

^{xiii} 335 Phil. 82 (1997).

^{xiv} Augusto Villalon. “Remember jai alai: Stop making Manila heritage demolition victim.” *Philippine Daily Inquirer*. 15 July 2012. <http://lifestyle.inquirer.net/57505/remember-jai-alai-stop-making-manila-heritage-demolition-victim#ixzz3zUCcJWLr> accessed on 8 February 2016.

^{xv} “The Game's Over: A link with the past goes as Manila's Jai Alai stadium is torn down” by PETER CORDINGLY and RUEL S. DE VERA. SEPTEMBER 1 , 2000 VOL. 26 NO. 34 <http://edition.cnn.com/ASIANOW/asiaweek/magazine/2000/0901/as.heritage.html> accessed on 8.02.2016.

^{xvi} Ibid.

^{xvii} Edgar Allan M. Sembrano. ‘September Massacre of Manila’s Heritage’ condemned. *Philippine Daily Inquirer*. October 6, 2014. <http://lifestyle.inquirer.net/173745/september-massacre-of-manilas-heritage-condemned>

^{xviii} G.R. No. 213948. The case has not been decided upon by the Supreme Court as of this writing.

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Bare Acts

Republic Act No. 7356

Republic Act No. 8371

Republic Act No. 10066 (National Cultural Heritage Act)



SECTION- II

NATIONAL



The Critical Role of “New Theory”, “Old Knowledge Systems” and Jurisprudence for “Responsible Protection and Management” for the living heritage of historic places, cities and cultural regions of India

Prof. Nalini Thakur

About:

Nalini Thakur is a retired professor and Head of the Department for Architectural Conservation at School of Planning and Architecture Delhi. She was also associated with the founding of the Asian Academy virtually located at Bangkok and educational Institution of ICOM and UNESCO for the heritage management education in the Asia Pacific. Her professional and experimental project includes Mehrauli, Cultural Region of Braj, World Heritage sites of Champaner – Pawagadh, Majuli, Khajurao and Hampi.

Abstract

This paper shares experiences of research, teaching and project work over decades in the area of complex heritage sites and historic cities in India developed by the author, over three decades related to the legal frameworks to illustrate the evolution and development of this discipline out of the chaos to initiate / commence an integrated interdisciplinary and holistic approach to evolve a “working model” to overcome the governance limitations for the democratic needs of current contemporary India. The outcomes of the completed model is encapsulated in the concept - “Responsible Protection and Management” of all categories of heritage resources and sites to give the direction towards good practices for a plural society.

Keywords

Indian Cultural landscapes, New Paradigm, Built heritage Knowledge Systems

1.0 The colonial inheritance and its problems

The enormous challenge posed in the safeguard of “living heritage” regarding legal instruments in the area of culture and cultural resources is plagued with the post - colonial problems and rooted in the European paradigm of the 19th century ideas for policy and administration. This begins with The Ancient Monuments Preservation Act, 1904, enacted by Lord Curzon, the Viceroy at the seat of power of the British Empire. As the practice of the time, in Europe it recognized a select list of outstanding heritage both monuments and sites. This Law framed in 1904, though considered far-reaching for its time, was monument-centric, Victorian, following a colonial perception of India and was enacted for the Imperial administration. Although limited in approach, this was adopted as the National law (The Ancient Monuments and Archaeological Sites and Remains Act) in 1958 with little modification. The organisation established under the act is Archaeological Survey of India, who managed to protect around 3700 monuments of national importance in this vast country.

The implementation of this Law was always problematic because it failed to address the contextual / ground realities because monuments represent a miniscule part of total types and numbers that make the whole. It is not comprehensive but very selective showing only the tip of the “Great Iceberg” of Indian heritage which was recognized for National protection compared to the scale, complexity and diversity of this heritage it can be said that India is a microcosm to the macrocosm that is the worldⁱ.

2.0 Overview - Post Independent India

The Republic of India has numerous states /regions each with its own language, regional architecture and attitudes towards shaping space and production of buildings. The religious diversity brings in another dimension in this multifaceted context. Best defined as the “Indian Cultural Landscape (ICL),ⁱⁱ” embodying a combination of values and meanings from sacred and the metaphysical to the mundane and the physical inscribed on real ground or geography. Its people and communities demonstrate a cognizance of geography which is already embedded in their culture and language. The physical-geographical constraints have, in fact, enhanced the local culture – that is, the development of language, literature, dress, and other customs. Indian Cultural Landscapes and their contents thus present a characteristic spatial, morphological and typological vocabulary, borne through unique historical, geographical and anthropological dimensions. In contemporary India, one can discern the surviving elements of this underlying layer which directly connects the contemporary nation to this legacy trying to coexist with the modern layers as living historic cities, forests and groves, cultural regions, landscapes, built forms, bearing the testimony of a time-space continuum. No other country in the world has this foundation of the beliefs forming a complete “layer” on which geography has been given meaning that is alive to this day. It is imperative to protect ICL layer where the myths and beliefs find tangible real sense that can be recognised by its people. This is unique to our culture where our entire stories has been inscribed on real ground making it document. This layer is under great threat and is eroding and of course not protected - the global flat world levelling the cultural legaciesⁱⁱⁱ

Our colonial rule has moved us away in other ways also, that has fractured our past and its meaning from the present consciousness. Only those aspects that have impact on Built Heritage protection and management are taken up in this point. First of all, educational reform in the 19th century overlaid English language as the medium of education with the objective of forming an Indian cadre to assist the colonial officers. The curriculum and subjects were based on the west. The legal framework and other official framework were all based on the western system. So also with the teaching of history and architecture; thus causing a loss of cognition / recognition of the inherited cultural contents and its meanings, this is a handicap and there is need to prepare to become equal partners in the International arena.

The paradox is that buildings are standing but information is scarce, this is another big problem part of being separated from our past, and the continuance of a colonial legacy of defining the heritage. The entire paradox leads to a search for meaning in contemporary times, to integrate the existing historic environments to the past. Proper processing of information leads to knowledge and understand critical to responsible protection and management, to develop appropriate systems for the democratic nation. As an independent nation meant that India is a free, sovereign and democratic country binded by the jurisprudence laid out by the constitution. The cultural diversity, plural beliefs broadens the scope of heritage; bringing in living heritage categories of historic cities and regions further increases the numbers of cultural resources, thus breaking free the colonial legacy to re-define the heritage resources as per our culture. Hence there is a need for a new paradigm required for identification, protection and management of heritage.

The first level impact was felt in the arena of pedagogy especially in Conservation Education. It was realised that Indian Conservation education had to carve its own path to make it relevant to the country heritage – to question the strong leaning towards the western theory and philosophy. Rethink and innovation required to tailor curriculum to address challenges and develop a new curriculum with new additions and innovations that will lead new theory based on the Indian ethos leading to true global understanding of heritage. Blending the deep rootedness of culture in India and the exposure provided by the teaching experience, the author designed the architectural conservation syllabus for the master's program in SPA Syllabus 2002. The course at one level emphasised the need to understand not only the built heritage but also the traditional knowledge systems attached to it. On the other hand it equipped students to learn from India's heritage studies the forgotten or hidden underlying theoretical concepts to work out informed actions leading to responsible protection and management of heritage. The journey of three decades of pedagogy and experimenting with real time projects highlighted that conservation and heritage is an area of concern as it should be done with a central idea to improve living conditions. This goes beyond theory to ground actions and the author devised the "ppt model" – people place and time theory tailor -made to Indian Context to build knowledge.

Another tool for protection beyond AMASR Act 1958 was found in spatial/ planning laws. Though not directly applicable in heritage identification, they still could be used for heritage protection. This opened the new possibilities of engagements with other disciplines heading to an integrated and holistic approach for protection and management of heritage. This

approach led to developing frameworks for protecting built environments along with stakeholder participation. These frameworks, developed over three decades did not restrict itself to prescribed protection of monuments and boundaries of 100 metres and 200 metres of prohibited and regulatory zones prescribed as per AMASR Act 1958. The projects which displayed these emerging paradigms are Hampi, Khajuraho Heritage zone, Kangla and Champaner Pavagadh Archaeological park. One example of Hampi is elaborated further as illustration:

Hampi Integrated management Plan (IMP 2003-2007) demonstrates the critical importance of “Indian National Framework*” devised to develop effective tools and mechanisms that safeguard a complex living sacred, royal and secular cultural landscape like Hampi World Heritage Site, primarily an archaeological site covering the 16th century metropolitan capital of the Vijayanagara dynasty. The aim is to ensure safeguarding of the overall significance and values, regional, local – which encompass archaeological, historical, architectural, religious, socio-cultural, economic and usage aspects. Bridging between international directives and local realities lies the “National Framework” and the integrated management plan, an instrument that connects to the real ground of the World heritage Site for the protection, maintenance and management of entire range of heritage resources of the site in a participatory manner by involving the mandated agencies within the national, regional, local and traditional levels. This is to be achieved through a working group method and participatory decision making process where lateral co-ordination is forged between all concerned agencies. Two recommendations linked to the planning law were, delineation of the buffer Zone and the Archaeological Park nomenclature for the core area. The buffer Zone has been accepted by UNESCO as the buffer for the site. After a long struggle the Archaeological Park was accepted by the client ASI but due to lack of follow it has not been operationalised. The National Framework enables the professional to work legally and use the existing official structures of Governance. Numerous examples have been suggested in the various projects done and can be given. The critical point for the safeguard of the cultural significance and values of the site is that the method derived from the National Framework and working with it in the area of urban conservation and management which is getting popular bringing conservators in the scene, it is possible to ensure that heritage is managed professionally with good standards, in the competition with infrastructure and development sectors.

3.0 Need of professional practice

Another area of serious concern is the developing profession and engagement of professionals. This is also seen as emerging areas, where the Indian professionals have to adopt the global language when it comes to defining heritage, and globally too Indian professionals have to be treated as equal partners. There is a need to “re-conceptualize” and “reconfigure” our common heritage legacy. The need is to innovate and work at ways through communication, cooperation and collaboration. Our ability to operationalize basic principles in good practice has to be immensely strengthened.

4.0 To Way Forward

The need of the hour to focus and commit to responsible protection and management of built heritage is to relook at the current system of protection and redefine our heritage resources. Emerging new definitions and processes pave ways to improve interface with spatial planning and plural cultures. The thrust on building heritage based knowledge makes a strong foundation for responsible protection and management provided the knowledge base is organised for the benefit of the big picture. Through these new information base leading to new ways of working rediscovers the traditional knowledge systems, traditional maintenance and management which in turn can lead to building new conservation theory. Based on this emerging language of Responsible Conservation, The new language is a balance and understanding of scientific and traditional knowledge systems, leading to formulation of building heritage knowledge systems for contemporary application. . All efforts of redefining should be integrated to the conservation pedagogy in India.

Based on these definitions an evaluation needs to be undertaken whether heritage protection can be achieved by building systems which allow further interface between planning and other official sectors. The three tier protection system of national, state and local protection prescribed can be interpreted as per current constitutional provisions is adequate for immediate application. Or do we need a tailor made law to build and provide networks to deal with jurisdictions, more protection and improvement in interface with departments to improve interface and team working across the vertical and lateral hierarchies and divides. Do we finally break the top down jurisdiction and formulate a more decentralized system of protection and management of heritage. Also the good principles of our constitution about diversity of cultures and equality are brought in good practice. The need is really in operationalizing good practices in the protection and management of heritage.

5.0 Conclusion:

Protection and management of Indian heritage is a great challenge that needs to be effectively addressed by the mainstream through long-term collective commitment of the official and the popular world, its various agencies and institutions, involved in the sites. There is a need to develop context and resource specific tools that are not based on any preconceived notion but are developed through consistent involvement/engagement with the site.

End Notes:

ⁱ Excerpted from Nalini Thakur's India contribution in "Maledetti Vincoli" 2013

ⁱⁱ Nalini Thakur "Indian Cultural Landscape" in "Managing Cultural landscapes" edited by Ken Taylor and Jane Lennon, Routledge 2013

ⁱⁱⁱ Excerpted from Nalini Thakur's India contribution in "Maledetti Vincoli" 2013

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Legal frameworks for protection of built heritage in India

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About:

Dr. Vishakha Kawathekar has a post-graduation degree from SPA Delhi in Heritage Conservation. She is an academican and has a wide range of experiences with International and national conservation projects. She has worked as a conservation consultant for Archaeological Survey of India. She has taught at the Faculty of Architecture and Ekistics, Jamia Millia Islamia, New Delhi. Her doctoral research was on 'Relevance of the Ancient Monuments and Archaeological Sites and Remains Act 1958 and its applicability in the changed scope and advancement in the field of Heritage and its protection'.

Abstract

In India the Built Heritage has been protected through the Ancient Monuments and Archaeological Sites and Remains Act of 1958 (AMASR act of 1958). The act defines heritage as 'Movable' and 'Immovable' objects. The AMASR Act of 1958 has been designed to protect the archaeological heritage of India and still largely serves the purpose. But as the scope, advancements and understanding heritage has evolved over a period of time, the act has its own limitations. Any attempt to protect the entire gamut of heritage through this act will have its limitations as the philosophical basis of the concepts of archaeological heritage and the heritage as internationally understood in contemporary times have different meanings, different demands and different requirements.

Keywords

Paradigm, Philosophical Base, Built Heritage, AMSAR Act

1.0 Introduction

India is a country with a vast treasure of Built Heritage. Today there are 3677 Centrally Protected Monumentsⁱ declared as National Monuments under the relevant clauses of the Ancient Monuments and Archaeological Sites and Remains Act of 1958. There are around 5000 state protected monuments declared as state monuments under the relevant clauses of their respective State acts. Also there are large numbers of living monuments, which are under the control of Hindu Religious Charitable and Endowment boards / Waqf boards, which are regulated by the respective acts. A large number of ancient monuments are under the ownership of private institutions / individuals. The rest of the monuments are unprotected.

The Built Heritage and the Continuing traditions are a proof that, heritage still has its place in the life and culture of the people. Today Built Heritage is looked at more as products of culture, where its interpretations have become an integral part to conservation of these structures. Hence emphasis is more on values and significance of this heritage and accordingly they become heritage of Universal, National, Regional or Local importance. With technological advancements, the society has also drastically changed. Thus it is important to understand the meaning heritage has in the present society. The built heritage is constantly subject to potential threats like rapid urban growth, industrial and intensive agricultural activities, growing land prices, encroachments etc. Hence it is necessary to review the AMASR 1958 in these changed conditions.

1.1 Legal Protection of Built Heritage in India:

The concept of Heritage has not been new to Indian society as it is well built in the traditions, both in tangible and intangible forms. The intangible traditions lead to acknowledging the works of our ancestors, taking pride of being a part of the lineage and ensuring that all this treasure has been passed on to its future. This pride itself leads to the protection of the value of the heritage, thus facilitating the survival of our traditions and heritage till today. Legal protection is different because law enforces it.

1.2 The Constitution of India and provisions for heritage:

The Constitution of India governs all citizens of India. The Constitution gives the legal framework for the country. Culture and heritage are an integral part of the Constitution. Various provisions are made through the fundamental rights, directive principles of the state, fundamental duties and 73rd and 74th amendments to the Constitution.

1.3 Fundamental Rights:

In part IV of the Constitution is laid the 'Fundamental Rights which have built in cultural rights. Article 21 gives Indian Citizens the "right towards protection of life and personnel liberty", Article 25 provides "freedom of conscience and free profession, practice and propagation of religion" and Article 26 gives Indian Citizens freedom to manage religious affairs. In section (c and d) of article 26 it also provides the "right to own, acquire and administer movable and immovable property in accordance with the law". Article 29 gives Indian Citizens right towards protection of interests of minorities. It states "any section of Indian citizen having distinct language, script or culture of its own shall have the right to conserve the same".

1.4 Directive Principles of State Policy:

In part IV of the Constitution has laid the 'Directive Principles of State Policy'. Article 49 is for the protection of monuments and places and objects of national importance. Article 49 states that "it shall be the obligation of the state to protect every monument or place or object of artistic or historic interest, (declared by or under the law made by the parliament) to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export as the case may be".

Nowhere the use of words including heritage, conservation, preservation etc. has been occurred. The word protection is used in a very restrictive sense of stopping from removal and destruction in turn implies for conservation and preservation. The approach is completely preventive.

1.5 Fundamental Duties:

In part IV A of the Constitution the Fundamental duties have been given. According to article 51A(f). it is the *"duty of every citizen of India to value and preserve the rich heritage of our composite culture"*. This acknowledges and preserves the cultural diversity of India and the word heritage is used in the clause. The article 246 of the Constitution gives the subject matter of the laws made by the Parliament and the Legislatures of the state as per lists in the seventh schedule.

As per article 246,

Correspondingly India has a Central Act ⁱⁱnamely, The Ancient Monuments and Archaeological Sites and Remains Act 1958 which is a self-contained law relating to ancient monuments of National Importance falling under Entry 67 of List 1 and to archaeological sites and remains falling under Entry 40 in the Concurrent List.

Antiquities and Art Treasures Act, 1972 came into force from 9th September 1972. According to the Act, export trade in antiquities and art treasures are regulated and smuggling and fraudulent dealings in antiquities and ancient monuments is prevented.

The Public Records Act of 1993 came into force with effect from the 2nd March 1995. According to the Act the Central Government in the Department of Culture has the power to permanently preserve public records, which are of enduring value. Of these only the Ancient Monuments and Archaeological Sites and Remains Act 1958 is applicable to the Built heritage.

1.6 Seventy Third and Seventy Fourth Amendments to the Constitution:

The 73rd and 74th Amendments to the Indian Constitution was brought in a Local Government system as the third tier of governance with focus on economic development and social justice. The empowerment of the local bodies namely the Municipal Corporation, Councils and Nagar Panchayats through the Seventy Fourth Amendment in 1992 can have a direct bearing on heritage and urban environment. The Eleventh and Twelfth Schedule of the Constitution lists various functions of the local bodies. Among the subjects listed in the Eleventh Schedule is "S.No.21. Cultural activities" and "S.No.29. Maintenance of community assets." Most States have either amended their Panchayati Raj Acts, or brought in fresh legislation in accordance with the 73rd Amendment to the Constitution. Similarly, the legislature of a State may, by law,

endow the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them, including those in relation to the matters listed in the Twelfth Schedule.

1.7 The National Law for protection of Built Heritage in India:

2.0 The Ancient Monuments and Archaeological Sites and Remains Act (AMASR) 1958ⁱⁱⁱ

Definitions of what the act protects^{iv}:

In this Act, unless the context otherwise requires, —

“Ancient Monument” means any structure, erection or monument, or any tumulus or place of interment, or any cave, rock-sculpture, inscription or monolith which is of historical, archaeological or artistic interest and which has been in existence for not less than 100 years and includes remains of an ancient monument, site of an ancient monument, such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument, and the means of access to, and convenient inspection of, an ancient monument; in-title of any such owner.

“Antiquity” includes any coin, sculpture, manuscript, epigraph, or other work of art of craftsmanship, any article, object or thing detached from a building or cave, any article, object or thing illustrative of science, art, crafts, literature, religion, customs, morals or politics in bygone ages or any article, object or thing of historical interest.

“Archaeological Site and Remains” means any area which contains or is reasonably believed to contain ruins or relics of historical or archaeological importance which have been in existence for not less than one hundred years, and includes such portion of land adjoining the area as may be required for fencing or covering in or otherwise preserving it, and the means of access to, and convenient inspection of the area, and any article, object or thing declared by the Central Government, by notification in the Official Gazette to be an antiquity for the purposes of this Act, which has been in existence for not less than one hundred years. “Protected area” means any archaeological site and remains which is declared to be of national importance by or under this Act. “Protected monument” means an ancient monument which is declared to be of National Importance by or under this Act. Nowhere the act uses the term heritage.

2.1 Salient features of the Act:

The act has total of 39 sections and the main features of the act are:

The Preamble of the Act states that the act is for the *“preservation of ancient and historical monuments and archeological sites and remains of National Importance, for the regulation of archeological excavations and for the protection of sculptures, carvings and other like objects.”* Preamble states the reason for the act and gives important definitions:

Ancient Monuments and Archaeological Sites and Remains of National Importance: Power of Central government to declare the monument of National Importance and the process associated with it. Criteria for nomination shall be as per the definition. No format, guidelines or parameters associated with identification of monument and site of National importance given.

Protected Monument: Acquisition rights, rights to enter into agreement with owners, purchase rights as per Land Acquisition Act of 1894, maintenance of monument, protection of place of worship from misuse, pollution or desecration and voluntary contributions towards maintenance of site

Archaeological Excavations: Excavations in protected areas and other than protected areas, compulsory purchase of antiquities, etc., discovered during excavation operations, and prohibition powers to stop excavation by anyone unless without the previous approval of the Central Government (ASI)

Protection of Antiquities: Power to control moving of antiquities and purchase of Antiquities (as per provisions of the Antiquities and Art Treasures Act (52 of 1972)^v

Principles of Compensation: Depends on provisions under the Land Acquisition Act of 1894 and Antiquities and Art Treasures Act (52 of 1972)

Miscellaneous: Delegation of powers, punishments, recovery of amounts, power to make corrections, rules to declare ancient monuments, etc., which have ceased to be of National Importance

2.2 Analysis of the AMASR Act of 1958:

Ancient Monuments Act is applicable to ancient monument, antiquity and archaeological sites and remains whose age is above 100 years. It recognizes protected area in a restricted archaeological sense, declarative powers and acquisition powers. The AMASR Act of 1958 has declarative and acquisition powers. The Act recognizes ownership in three ways: private with regulatory control, government with regulatory control and acquired property under the regime of the act. The Act has inbuilt provision for the 'List of protected monuments of National Importance' protected by the Archaeological Survey of India, The Act delegates the preservation, repairs and maintenance of monuments and it acknowledges the living component of the protected monument only in case of religious structures. Protection of place of worship is again restrictive only from misuse, pollution and discretion. Miscellaneous powers including penalties are incorporated in the AMASR Act of 1958.

3.0 Observation and Analysis towards the provisions of the Act and its applicability in Contemporary times

3.1 Preamble of the Act

The preamble does not state of protecting the monuments in its context, which in turn needs regulating development activity around monuments and sites. It doesn't acknowledge that the monuments and archaeological sites are constantly exposed to threats like development activities including infrastructural developments, industries, tourism etc. and that act proposes to build in effective safeguards against threats. Comprehensive expression need to be updated and used in the preamble as well as in the relevant Sections of the Act in line with the various UNESCO Conventions ratified by India^{vi}.

No guidelines or criteria have been laid either in the Act or in the Rules to qualify the status for a historical monument or site of National monuments objectively. Such a situation has given rise to anomalies. While a procedure has been outlined under the Act (Section 4(1)-(3))

for declaring such monuments and sites under this category, no criterion has been laid down for determining the level of their importance the qualifying criteria's to the list of Centrally Protected National Monument.

3.2 Definitions:

The definitions of the act need to be updated as per the UNESCO Convention concerning protection of World Cultural and Natural Heritage of 1972^{vii} as applicable in Indian context, as we are the signatories of the convention. New Areas/ fields of research like Cultural Landscapes^{viii}, Under-Water Archaeology^{ix} etc. need to be incorporated.

The age-limit factor of hundred years has stayed since 1904 when the Ancient Monuments Preservation Act was first enacted. There are numbers of structures of architectural and aesthetic importance, some of them less than one hundred years old, which remain unprotected and as such are increasingly exposed to dangers of misuse, damage, or even extinction. Lowering of age limit or the requirement of age limit as a qualifying factor needs to be considered.

New categories of Heritage like Industrial Heritage Modern Heritage, Heritage of 19th and 20th Century Architecture e.g. examples of technological marvels etc. need to be incorporated. The 1958 Act also defines antiquity (Section 2(b)), which, notwithstanding the hundred year's clause, is fairly exhaustive but excludes fossils and objects of paleo anthropological and prehistoric interest. These have, therefore, to be added under the definition of antiquity^x. The "List of protected monuments of National Importance" needs to be reviewed objectively. The analysis needs to be undertaken as per the geographical locations, historical, social, typological, religious aspects. The architectural values including the scale, construction techniques, styles and knowledge systems should be considered to know qualitatively what is protected and what needs to be protected. The list should also be evaluated for equal representation of heritage, associations, layering and continuity in traditional practices.

It is equally important to qualify the "List of Protected Monuments of National importance" because the range of monuments differs in their importance. The famous Taj Mahal at Agra is one of the wonders of the World. It is a Protected Monument of National Importance. Similarly Kos Minar in Punjab is also a Protected Monument of National Importance. Same importance is awarded to both monuments as they enjoy equal status in the list of protected monuments of National Importance. A serious thought needs to be given on the categorization of monuments even within the 'List of protected monuments' of National Importance".

The other problem is defining the 'Monument' in its 'Context'. The scale ranges from fortified cities like Mandu in Madhya Pradesh, Jaisalmer in Rajasthan to Sacred Mountains like Sanchi and Caves of Bhimbetka in Madhya Pradesh. In all cases only few monuments within the entire fortified walls or portions of the sacred mountains get protected, the rest is either protected by State Archaeology Departments or else rest with the local governments. These areas or monuments also form a part of evidence of the heritage protected and are equally a testimony of history. This information is vital for the reconstruction of history, archaeology, knowledge systems and has great potential towards archaeological excavations.

The failure to protect the Context of the Monument has already resulted in loss of entire layers of history and the vital relationship of the monument to its surround. Example is the Ancient city of Bhubaneswar. The Lingraja temple has many smaller temples in an around the vicinity and all the temples had a deep relationship to the water tank in middle. Only the Lingraja temple and ancillary structures got protected. The prohibited and regulated area was not adequate enough to protect all relationship including that to the tank. Many temples, historic housing and open grounds got lost in encroachment, overcrowding and developments around. The tank deteriorated due to non-maintenance. It becomes a collection point for the surrounding area. The relationship between intelligent uses of nature to the Built is lost. Similarly, the destiny of Jahapanah Wall went the same way. In the entire sprawl of constructions and development the wall is lost. Even with various litigations and efforts by the Courts of India, the State Govt. or ASI only portions of the wall could be recovered.

Under the provisions of the act, agricultural practices to the depth of one meter are permitted. With modernization of agricultural practices, came in use of machines, fertilizers and seepage of water. These prove detrimental to the archaeological remains underground which are at stake. Also transformation of traditional agricultural practice stakes the value of the site for losing its importance. Vandalism is another threat either for illicit trafficking or for building materials e.g. Hampi Cultural Landscape Area^{xi}.

Protection of monuments and archaeological sites needs to be strengthened. Multiplicity of responsible agencies and overlapping decision by various agencies without information or consent of ASI officials needs to be resolved.

3.3 The Ancient Monuments and Archaeological Sites and Remains, 1958: Updated as per the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010

The basic definitions of what is protected under the act remain the same. The definition of prohibited and regulated areas change in the amendment, wherein as the case may be the prohibited and regulated area could extend more than 100mts and 200mts respectively but again does not give recognition to protecting the monument with its context. With this definition the prohibited and regulated area has an extent not only horizontal, but also vertically and below the surface. Categorization in respect of ancient monuments or archaeological sites and remains declared as monument of national importance mentions it shall regard the historical, archaeological and architectural values, of which neither the definition is given or in comprehensive to the basic definition of the act. Classification of monuments prescribed on recommendation of the authority makes a distinction between Construction, reconstruction and repair and renovation. Construction has a restrictive meaning new constructions or maintenance of public amenities and promotional structures. No guidelines are prescribed for undertaking such facilities, or establishing its necessity as public amenity. Reconstruction is any erection of a structure or building to its pre-existing structure, having same horizontal and vertical limits. Compatibility to be achieved with the existing surrounds is not mandatory. The architectural quality is compromised on Repair and renovation: means alterations to pre-existing structures or buildings, but shall not include construction or reconstruction. Heritage bye laws are to be made in consultations with INTACH and other trusts/ heritage bodies as notified by the central government.

Built heritage in India is also protected through special made laws that are localized acts. These acts are enacted to come in terms with the UNESCO conventions. Two such acts are Hampi World Heritage Area Management Authority Act of 2002 and Majuli Cultural Landscape Region Act of 2006.

Laws required for implementation of AMASR act of 1958 are Land Acquisition Act 1827, Public Premises Eviction Act 1971 and Antiquities and Art Act 1972. Heritage Protection is also provided with the help of other laws like the Town and Country planning Act, Indian forest Act 1927, Coastal regulation Zone Regulations, Cantonment Act 2006, Environment Act 1986 etc.

Urban areas in India are vulnerable due to developmental, economic, political and social pressures and measures are required for its legal protection and strong enforcement. No single act alone can take care of the dynamism of problems related to the heritage and its conservation; hence a mechanism has to be developed for heritage-focused developments in these areas. A critical question is about quantification of heritage protection mainly in terms of adequacy. Many would argue that an official declaration/ state protection under a law ensure protection, which primarily is inclusive of maintenance, preservation and conservation of the physical aspects of the heritage. But does declaration alone suffice to the protection? Is it only about the physical aspects of the heritage? The major concern areas for various arguments for heritage protection are inclusive of authenticity, conservation, management system and national identity. National Identity today is critical mainly in era of globalization and universality of heritage.

4.0 Response of India in the changed scope and understanding of heritage with special reference to Built Heritage:

With the current scenario of built heritage protection, it has been established that India has ratified the act by accepting the changes in the scope and advancement of heritage. Indicators are found in various government policies and schemes curriculums of education of archaeology, conservation and planning. Similar changes have been adapted in new branches of ASI like under water archaeology and in the discourse of intellectual society including individuals and NGO's, an expansion of meaning of heritage is seen.

The adequacy of these efforts still raises a question, as there has been no clear heritage policy for India in place. No constant research on the philosophical and theoretical frameworks for redefining heritage and its protection inclusive of maintenance of values and physical structure of heritage and management are visible. The attempts to redefine or widen the scope of built heritage and its acceptance has been still sporadic and individual driven. The validation of 'The AMASR 1958' has still been a mechanism development for prohibited and regulated areas rather than of expansion of the definitions of Built Heritage which is protected under that act. This brings us to a point where an evaluation of what is protected and what be protected needs to be discussed.

5.0 Reality to expected realm of protection of built heritage in India:

The increased efforts of Government Authorities including ASI in protecting India's heritage are facing the consequences of the country's rapid economic and social development. Old parts of cities are being replaced by modern housing areas, cultural landscapes are

disappearing, and many heritage sites are being destroyed by construction projects or disrepair. Heritage protection authorities lack the necessary staff and funds to protect heritage sites from further destruction or from being looted by criminals who supply the illicit art market. It is urgent to examine how these sites can be preserved and included into the development process without letting them stand in competition to it, as their loss would be a detrimental for all humankind.

Changing Perceptions of Protection and Built Heritage in India enumerates that a lot has been said and discussed about the vast realm of unprotected heritage of India. Somehow all the efforts are just not enough. The thinking and taking up of task to acknowledge the heritage of India needs to be done with great seriousness where the option of Thematic Heritage Protection based on the traditional knowledge systems including architecture must be undertaken.

This leads to analysis of Reality to Expectation. The AMASR 1958 protects the ancient monuments, an antiquity and archaeological sites and remains. It uses its powers of acquisition, prohibition and restriction to protect what it defines under the provisions of the Act. The base information to the formulation of the Archaeological Survey of India, AMASR 1958, selection of sites to the list of monuments of National importance, and 'The manual of conservation' by John Marshal all suggest and justify that the Act has been for protection and management of archaeological sites and remains as well as for the products of the discoveries and exploration under it.

With time and advancements in the scope and nature of heritage, the perception remained that as 'Archaeological Survey of India' must be/ is the only organization of protection of 'Built Heritage' in India and it has continued to be with all its efforts. Hence Archaeological Survey of India became the nodal agency for the World Heritage Nominations of India and represents the Government of India at the World Heritage Centre. The organization thus also incorporated new sciences like 'underwater archaeology' in its gamut. The expectations from the Act hence gradually shifted from sites of Archaeological heritage to Built Heritage. And all the discussions of 'heritage' as 'Heritage of India' are now expected to be protected under the Act.

Here the wide gap between what the Act protects and what it is expected to protect. The 'Archaeological Heritage' and the 'Built Heritage' are not in the same paradigms. The system in Archaeological heritage is discoveries and exploration, dealing with physical or material evidence. The change and development here is controlled in a prohibited and restrictive manner. The Conservation philosophy is based on Antiquarian Values and its interpretations. Emphasis is given to time history and political patronage. It is largely based on physical manmade evidence. In the case of built heritage, Cultural value evaluation becomes important. It calls for a Knowledge system approach; Change and development is seen as continuation of Culture and is guided for the future generation. The philosophy is value based and acknowledging both tangible and intangible aspects. Both dead and living aspects of heritage are dealt with, and the authenticity and Integrity being forms the guiding principles. The entire theoretical and philosophical bases of the two paradigms are different, having their own demands and requirements. Conceptual difference between Archaeological Heritage and

Built Heritage leading to a paradigm shift cannot be addressed by making amendments to the AMASR Act.

6.0 Conclusion

The argumentations and paradigm developments discoursed may be concluded that the 'Act' is not the real problem for the protection of heritage for which it has been articulated. It clearly states the restrictive definitions of what it protects and is still relevant for it. The dynamics associated with 'heritage' make the things more complicated. The AMASR Act of 1958 is based on principles of archaeological heritage and will always be subject to its own limitations as archaeological heritage is one of the values of the gamut of value-based evaluation of heritage. The future requirement of the protection of heritage needs a paradigm shift.

ⁱ Source: Archaeological Survey of India

ⁱⁱ National Law

ⁱⁱⁱ The Ancient Monuments and Archaeological Sites and Remains Act of 1958 (online) available at: http://www.asi.nic.in/pdf_data/6.pdf (Accessed on 13 March 2010)

^{iv} Bare Act : The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (Online) available at: http://asi.nic.in/pdf_data/6.pdf (Accessed on 29 March 2009)

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^{vi} UNESCO WHC, 1972, Convention concerning the Protection of the World Cultural and Natural Heritage and UNESCO 2003, Convention for the Safeguarding of the Intangible Cultural Heritage

^{vii} UNESCO WHC, 1972, Convention concerning the Protection of the World Cultural and Natural Heritage, (online) available at: <http://whc.unesco.org/en/conventiontext> (Accessed on 30 March 2009)

^{viii} The definition was adopted in 1999

^{ix} The concept shaped around in 2001

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Pre-independence legal frameworks for protection of monuments and archaeological sites in India

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About:

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Abstract

The paper attempts to illustrate the history of conservation in pre-independent India. It provides a well-ordered documentation of the evolution of Legal Framework for protection of Monuments and archaeological sites in India and the political and social contexts responsible for the same. Contributions of the colonial administration in discovering/identifying, documenting and developing a Legal protection framework for heritage are also discussed.

Keywords

History, Archaeology, Architectural Conservation, Legal Framework

1.0 Introduction:

India had dimly lit historical understanding of its own great past during late 18th century and it was only through the studies of archaeology and antiquarian studies initiated in late 18th century that we could know about ourselves. History of any conservation activities taken up for built heritage was not known in textual references.

2.0 Pre 18th century

Before 18th century a Kashmiri historian called Kalhana wrote a book called 'Rajatarangini' which talked about value of historical reconstruction of the remains of bygone ages. After him a Muslim historian called Abu Raihan Al-Biruni wrote about the literary antiquities of Hindus. Later, emperor Firuz Shah brought Ashokan pillars from Topra and Meerut and placed them in Delhi. Much Later in the sixteenth century, historian Abul Fazal and his state-gazetteer Ain-i-Akbari recorded accurate notes about historical monuments. There were some studies by Arabian visitors in 16th and 17th century and we encounter mentioning of architectural wealth at Delhi, Agra, Lahore, Gwalior, Mandu, Allahabad, Ellora, Kanheri and Elephanta but no systematic studies.

3.0 Development in 18th century

This process got reinforced only after understanding of Sanskrit language and the translation of Rigveda and Bhagavata Purana which opened a window of understanding for antiquarian studies. With foundation of **Asiatic Society** on **January 15, 1784**, an era of researches into the history, the antiquities, arts, Science and literature of Asia started. The Asiatic Society was founded by **Sir William Jones**, Judge of Calcutta Supreme Court who was a distinguished scholar, a linguist, well-versed with Vedas and Sanskrit. Once started, the society thrived rapidly and contributions started pouring in from all quarters about Asiatic researches, including geography, religion, music, architecture, ethnography. Sir William Jones's brilliant discovery of synchronism act between Chandragupta Maurya and Alexander the Great provided Indian archaeology a positive date to start with and he could fix the location of classical Patliputra and also unlocking the mystery of Gupta dynasty and their Kutila script starting a new branch of study called Epigraphy.

The first publication of Asiatic Society included famous inscription on Ashokan pillars at Firuz Shah's fort in Delhi. And, the inscription which proved to be the most significant discovery opened a Buddhist world associated with India. In 1801, stupa typology of monument was discovered in Sarnath, which gave way to later discovery of various stupas including the one at Amravati and Sanchi, as well as many caves used by Buddhist: Nagarjuni caves at Bodh Gaya, Kanheri caves in Salsette, Ellora caves, Elephanta caves and by early 19th century the frescoes of Ajanta were also discovered.

Till now many systematic explorations of archaeological sites were taken up by British officers but they were totally unconscious of their moral obligation to protect and conserve historical monuments. Even after the discovery of Taj Mahal, Sikandra, Fatehpur Sikri, Rambagh and Shah Jahan's palace it was common amongst British officers to shift away some of the finest sculptural and architectural components to other towns and to shift them away to England. At one point of time there was a proposal to dismantle Taj Mahal for the value of its marble.

4.0 Development in 19th century

In the **next 50 years of Asiatic Society**, Journal of Asiatic Society gained respect and many new scholars showed interest in Indian studies. Amongst them **James Prinsep** who also served as the Secretary of Asiatic Society could find a new family of rulers in India, the Kushanas through his epigraphic and numismatic studies. Later, Alexander Cunningham studied the Dhamek Stupa at Sarnath and succeeded in knowing the structural history of Stupas. James Prinsep also argued for the foundation of National Museum and could reveal the mystery of Kharoshthi and Brahmi script. He could identify Indian rulers of Kushana and Maurya dynasty contemporary to Hellenistic kings through studies of pillars at stupas of Sanchi. Another scholar, **James Fergusson** wrote his monumental handbook of architecture in 1855, which remained a reference point for coming 50 years. During this period the British Government in India started caring about the conservation of monuments such as cave temples of Ajanta and Ellora and started documentation process.

Alexander Cunningham after his experience in Sarnath and Northwest part of India realized the necessity of organizing a countrywide survey of archaeological remains and kept on asking the Government to propose archaeological investigations. In 1861, he could convince Lord Canning to institute a careful and systematic investigation of all the existing monuments of ancient India. The scheme accepted by Canning's Government was limited to survey and description of monuments but the conservation was left outside the scheme as Government never wanted to commit themselves with extra expenses. After two years, Government realized the need of conservation and passed an act to prevent injury and preserve buildings remarkable for their antiquity or architectural value and **in 1861 Alexander Cunningham was appointed as Archaeological Surveyor and thus began Archaeological Survey of India**. This was the time when Chinese pilgrims Fa-Hien's and Hiuen-Tsang's accounts were published and Cunningham focused on the places which Chinese pilgrims has visited in the seventh century from west to east in India, visiting the famous sites of Buddhist History and tradition. Hence places like Banaras, Bodh Gaya, Sanchi, Kannauj, Kashi, Mathura, Delhi and, in the west, Takshashila, Manikyala, Sarhind and Thaneshwar were studied.

Cunningham's operations received appreciation but the successive Government suddenly stopped them and Cunningham went back to England. The policy of preservation of historical monuments was already in place but not practiced unless there is a new discovery. Instead, in 1867 the Government issued a similar circular to local Government for documenting and preserving the historic monuments. In this period many art colleges were established in India to train Indian workers for documenting and making moulds and casts. In **1870's Lord Mayo**, the then Governor General, realized the need of establishing a central department and felt that to be able to perceive anything about monuments; they have to be kept in their original context and thankfully Mayo's views led to the **revival of Archaeological Survey of India** with Director General as its Head.

Alexander Cunningham was again called to head this body and to launch survey work all over India. At this time, Archaeological Survey of India reflected a clearer understanding of positive approach to the needs of the country. As Cunningham resumed his work in February, **1871** he launched survey of the two great capitals of Mughal Empire Delhi and Agra. Then, he explored

Rajputana, Bundelkhand, Mathura, Gaur in Bengal and launched clearing of Bodh Gaya temple in Bihar. His explorations in Bundelkhand were particularly important for Gupta style of architecture. He could also locate the proto-historic site of Harappa as early as 1873.

Conservation activities were kept outside of the Director General's purview from the very first, and Government repeatedly issued circulars assigning the duty of caring of preservation of all monuments and buildings of architectural interest to the local Government. The important event was British Government in India's decision to pass **Treasure Trove Act of 1878**, which authorized Government to claim possession of any treasure unearthed that exceeded ten rupees in value and the responsibility of administration of this Act came in hands of central Government.

Slowly it was realized that preservation of national antiquities cannot be left in the charge of local governments only, and a Curator of ancient monuments was proposed to be appointed. **Major H H Cole was appointed in January 1881 as curator of ancient monuments** and in three years he prepared 22 reports on monuments of Bombay, Madras, Rajputana, Hyderabad, Punjab and North West Province. He also supervised the repairs of gateway at Sanchi, Agra fort, Sikandara, Fatehpur Sikri, Mathura and Vrindavan. On the basis of all these reports, local Governors were asked to list the monuments in three categories as most important, Desirable to be conserved, and Difficult to be conserved.

At this time Cunningham again advocated the need of a central authority for conservation as he believed that the trained and experienced archaeologist who has examined, measured and described the buildings of different ages was naturally the best authority as to the style of all the repairs that may be required for any ancient monuments. He pointed out that the divided authority was a mistake and the best would be a combination of conservation and exploration. Cunningham retired on October 1, 1885. He was the first to stress the importance of conservation, precise field work, accurate description, and he evolved a uniform system of recording each building of importance, every antiquity of interest and every site of any promise.

James Burgess followed the footsteps of Cunningham and his early training as an architect had fitted him for this significant role. He gave his attention towards South and West India and Elephanta was documented very carefully. Shatrunjaya temple, Somnath temples and Girnar temples of Gujarat were some other examples of ancient architecture documented by Burgess. In South, remains of Amravati stupa and Chalukyan temples as well as remains at Mahabalipuram, ruins at Hampi and Islamic architecture of Champaner and Ahmedabad were all documented with proper architectural details.

Burgess recommended complete amalgamation of conservation with survey work and pleaded for closer cooperation between the museums and survey officers in the matter of conservation, describing and studying the antiquities. **Burgess assumed the charge of Director-General in 1886** and during his time he added emphasis on architectural survey. He also insisted professional control of excavation and any digging was declared illegal unless conducted by permission of ASI. He also started a publication called 'Epigraphia Indica' which published Tamil, Sanskrit and other inscriptions. In his own words "archaeology was a search in architectural styles, a hunt for the evidence that might reveal the age, purpose and history

of structure, as well as plan arrangement and relation of sculptures associated with it". With the completion of his tenure in **1890**, an era of architectural archaeology ended.

By this time India's past beyond the age of Ashoka was not known, whereas in the other parts of the world pre-historic studies were gaining ground. **Lord Curzon appointed in 1899**, brought a new intellectual awakening in the field of archaeology and conservation. He expressed his shock about apathy of Government on the worst condition of buildings of historic importance. He proposed complete revival of ASI and **John Marshall was appointed as Director General**.

5.0 Development in 20th century

In his order of appointment it was declared that the most important function of Director General was to secure that the ancient monuments of country are properly cared for, they were not utilized for purposes which were inappropriate, repairs were executed when required, and restoration which might be attempted were conducted on artistic line. It was also emphasized by Lord Curzon that it is our duty to dig and discover, to classify, reproduce and describe, to copy and decipher and to cherish and conserve. No other Governor General emphasized so much on cause of archaeology and at this time with John Marshall as DG ASI, the **Ancient Monuments preservation Act, 1904** was enacted. Even after 115 years we use the manual prepared by Sir John Marshall. Probably the principles propagated by John Marshall were based on prevalent ideas and principles of the 'Society for the Protection of Ancient Buildings' (SPAB) in England propagated by William Morris.

John Marshall's era in India continued for 25 years much after the departure of Lord Curzon. During this period remarkable achievements were made, and for the purpose of conservation his following words remained principles till today. He pointed out that hypothetical restorations were unwarranted, unless they were essential for stability of a building that every original component of a structure should be preserved intact, and demolition and reconstruction should be undertaken only if the structure could not be otherwise maintained. The restoration of carved stones, carved wood or plaster molding should be undertaken only if artisans were able to attend the excellence of the old and that in no case mythological scenes should be re-carved. During this time only it could be discovered that Buddha was born in India and Buddhism spread from India to China.

Archaeology before Marshall's time was probably a quest for objects of art but he wanted to recapture the total culture of India in past ages with their cities and street, their furniture and tools, their arms and weapons, their ornaments and jewels, their seals and coins, as well as their laws and customs. This reflected in the sites he undertook for exploration like Nalanda and Vaisali, Patliputra and Bhit, three cities of Takshashila and proto-historic towns Mohenjo daro and Harappa.

During his time he could train native Indians like K N Dixit, D R Sahani and M S Vatsa who later became Director Generals. Marshall was also responsible for expanding Indian Museum at Kolkata and also setup large number of museums including those at Agra, New Delhi, Delhi fort, Lahore fort, Takshashila, Mohenjo daro, Harappa, Sarnath, Nalanda, Bijapur, Gwalior, Khajuraho and Sanchi. Among other achievements of Marshall one may be mentioned as

setting up an excellent library called Central Archaeological Library containing all reports on archaeology produced since Cunningham's time.

In **1928**, in the middle of Indus Valley Civilization excavation activities, Marshall retired but he stayed in India till 1934 and wrote monumental books on Mohen-jo-daro and Indus Valley Civilization, monuments of Sanchi in two volumes and Takshashila in three volumes. It is said Marshall will always be remembered as the man who left India 3000 years older than he had found her. Later D R Sahani, K N Dixit continued the work started by Marshall till 1944 when Second World War depleted many resources of the Government. But in this period between 1930 to 1944 many universities and institutions were allowed to undertake excavations and discoveries like Paharpur stupa, Bhangarh, Ropar, Dinajpur and many Harappan and post Harappan sites.

In **1944**, **eminent British archaeologist Sir Mortimer Wheeler** was called to look after the archaeological activities in India. He brought with him latest scientific methods of excavations and trained a lot of Indians and started conservation courses in universities and other institutions. He also started the National Museum in India and a bulletin of the department called 'Ancient Indian'. In four years of his time extensive excavations were carried out in Mohen-jo-daro and at many Harappan sites. It was then well established that Indus Valley Civilization was a wide spread phenomena. After independence, Wheeler relinquished his charge on 30th April, 1948.

6.0 Conclusion

An immediate effect of political revolution was cultural India being divided into political India, Pakistan and East Pakistan. Very important Gandharan sites at Takshashila were lost to West Pakistan. Similarly very important Buddhist sites were lost to East Pakistan. While after departure of Wheeler Dr. N P Chakravarty, M S Vatsa and A Ghosh became followers of Wheeler and continued their work. In 1950's it can be said that no part of the world was better served in archaeological matters than the Republic of India.

The Constitution promulgated in 1950 made a radical change in the allocation of responsibilities between the centre and the states. It had both positive and negative aspects but thankfully in 1951 all those monuments which were declared by the 1904 Act were declared as monuments of National importance. The States established their own departments and made their own list sometimes from the princely state list and kept updating it as per the documentations and discoveries made.

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Legal and Administrative Framework for Protection of Heritage in India – An administrator’s perspective

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About:

Ms. Anshu Vaish earned her degree of M.A. in Ancient Indian History from Rajasthan University, Jaipur and M.A. in Economics from University of Manchester, U.K. She has worked as lecturer in History at Rajasthan University and served as reputed IAS officer in India. She has served in many government department of India in various capacities. She has also, served as Director General of ASI. She retired from GOI in 2012 as Secretary, School Education and Literacy, MHRD. Currently she is member of the governing bodies of various organizations such as AIIMS, Bhopal, PRADAN, New Delhi, etc.

Abstract

In this paper, based on the Author’s experience as an Administrator in Archaeological Survey of India, laws, rules and regulations are necessary for heritage preservation for heritage preservation, particularly so in developing countries where the challenges are complex. This paper discusses the significance of a community participation model in heritage Conservation in India. It also tries to address the lack of protection of many significant heritage, which may result in negligence from the authority when it comes to preservation.

Keywords

Heritage Preservation, Archaeological Survey of India, Protection, Community Participation

1.0 Introduction

Right through their career administrators, mainly civil servants are trained to revere the rule of law as a panacea. Of course one needs to be a bit flexible, a bit adaptable in interpreting the laws and rules in the interest of sensible administration. But in the area of heritage protection, flexibility and adaptability take on whole new meanings and dimensions. Just as conservation of heritage requires great sensitivity and careful execution, protection and management of heritage also requires sensitive and delicate handling.

Laws, rules and regulations are very important but they need to be able to adapt to context. So they need to change with the times and also with varying geographical conditions and cultural milieu. In the ASI, we found that uniform countrywide legal stipulations about protected and regulated areas were causing too many practical problems. Consequently we had to set up an administrative mechanism to apply the law in keeping with the context. A legislative and administrative framework for heritage protection should be just that – a framework within which national, state and local authorities can put in place measures to protect heritage of varying value, significance and context.

Initially in ASI, the protection of heritage happened by treating a monument complex or site as a standalone, individual asset. In the process, we lost sight of the big picture. If people management was essential, for instance in a temple or mosque, then that was seen by heritage managers as a necessary evil which made their task that much more difficult. Travelling to protected sites across the country, it could be found that the spaces are shuttered and locked up behind grills to ensure their safety. This was because we were placing our reliance exclusively on formal laws and rules, and were thus resorting to measures such as locking up and trying to limit the presence of people. We failed to recognise that in addition to formal laws, there are informal laws and rules that govern heritage preservation in tradition bound societies. So we generally made no attempt to build bridges with traditional and community based social structures. Perhaps the problems and issues that present themselves in heritage protection may have been more easily resolved if we had sought the support of traditional law enforcers including religious and community leaders.

2.0 Making Heritage Preservation sustainable

Heritage preservation at the cost of keeping people out is both unethical and impractical. This applies equally to cultural and natural heritage. Madhya Pradesh is known as the Tiger State and there are quite a few National Parks within this State's boundaries. A large number of forest villages need to be relocated every time a National Park is delineated. This process needs to be slow, deliberate, and mindful of people's lives and livelihoods. This State has adopted, with fair success, a community participation model in forest management. There are Joint Forest Management Committees which function on the principle of a symbiotic relationship between forests and the people that live in and around them.

There is no reason why this model cannot be adapted to cultural heritage. In fact, given the magnitude of the challenge of preserving our cultural heritage and the shortage of manpower to achieve the task, we really have no choice but to make local communities our allies. Heritage preservation can be sustainable only when the community becomes an active and vigilant partner in the process. This requires a two-way street. The heritage managers must

provide easy and affordable access to the local people and allow the use of cultural properties for local purposes, ceremonies and the like. But it also requires a sense of ownership and responsibility towards the heritage on the part of local communities. And this needs to be inculcated through constant dialogue, awareness generation and also capacity building of the local community. Such a process was initiated by the ASI and the World Monuments Fund in the interest of preserving the Jaisalmer Fort, which has a whole township living within its walls. It cannot be said with certainty whether it met with success but the initial stirring of the pot was definitely promising.

3.0 Contextualising tangible heritage

Tangible heritage also needs to be contextualised within the intangible heritage that surrounds it – the environs, the proximate traditions of art, craft and culture, the everyday needs of the people around the heritage property. ASI partnered the Aga Khan Trust for Culture in a multi-dimensional project for the conservation of Humayun's Tomb in Delhi. This was coupled with the socio-economic rejuvenation of the Nizamuddin Basti area close to the monument. In addition, Sundar Nursery next door to the complex was to be developed into a vibrant public space. This was the first such comprehensive project that ASI coordinated, and it has proved to be a most rewarding endeavour. In addition to the conservation of Humayun's Tomb, the Nizamuddin Basti has seen significant cleaning, restoration of old and defunct water sources, and improvement of schools and health centres. Periodic qawwali concerts are held. Monuments within Sundar Nursery are being restored and the huge garden is being upgraded to a beautiful, accessible and live green lung in the heart of Delhi. Thus the monument has been seen as part of a larger whole, encompassing both tangible and intangible heritage, and has been preserved as such.

4.0 Conclusions

The problem of inadequate funding for heritage preservation has grown with time. Demands to protect and regulate more heritage sites are endless while there aren't enough funds even for the existing ones. In India, proceeds from sale of tickets and publications at monuments and museums go into the exchequer. Heritage preservation is then funded through budgetary flows which are never enough to meet the needs of the ASI at the national level and Directorates of Archaeology in the States. Inevitably, preservation of the more visited monuments and sites, especially World Heritage sites, is prioritised. This can result in important monuments and sites being neglected because they are remote or not as attractive to tourists. Attempts are made to harness corporate funds but those too are easy to raise only for the sites that have greater visibility. These problems are not peculiar to India. How should they be addressed? There are no easy answers. Since availability of adequate funds is what will impart meaning to the agenda of heritage protection and make it deliverable, especially in the developing world, it is my hope that this workshop will deliberate on this issue and suggest ways in which funding could be dovetailed with the legal and administrative structures.

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Alternative Dispute Resolution (ADR) in Heritage management, a case study of Charminar Pedestrianisation Project (CPP) area, Hyderabad, India

Nitin Sinha

Abstract

The judiciary mechanism of our country is progressing towards a new horizon by encouraging new innovative alternative dispute resolution methods and practices to an extent of incorporating these in C.P.C i.e. civil procedure code. These are focused towards bringing about a change from adversary mode of litigation to non-adversary means such as arbitration, conciliation, negotiation, mediation, expert appraisals etc. Through various cases, one is well aware that best and worst possible method of safeguarding the unprotected and protected heritage is through filing P.I.L. To achieve positive results in such legal relief, actions have to be strongly supported by technical reports and expert committee appraisals. Present day heritage management demands less of legal litigations and more attention for the resource at risk. The main objective of this paper is to present an alternative system of developing sensible & best achievable legal-solutions through the amalgamation of support from conservation professionals & legal experts. This system is at present put into study by the author through an urban conservation project – “Charminar Pedestrianisation Project (CPP) area & Conservation of Lad Bazaar at Hyderabad”, Telangana, India. This paper, presented at ICLAFI Conference at SPA Bhopal, is an updated version to an earlier published case study article by the author in the journal titled “Context”.

Keywords:

Urban Conservation, Architectural Conservation, Heritage Management, Listed Buildings, Management framework, Legal Disputes, Court Litigations, Alternate Dispute Resolution (ADR)

1.0 Introduction

Charminar Pedestrianisation Project (CPP) area, Hyderabad, INDIA

Charminar Pedestrianisation Project (CPP) area can be expressed as an ideal example of urban conservation problems. As one observes the traffic, pollution, disarray of amenities, encroachments & insensitive redevelopments in the parts of Hyderabad city, especially to the south of river Musi, one fails to locate and comprehend the historic city fabric. Today, CPP presents complex issues of heritage management such as redevelopment, economic pressures, non-participation of local community in heritage protection etc. It is also in this area where one observes the multiplicity of agencies and statutes/regulations that make the process of heritage management and dispute resolution more difficult and challenging.

The following are the statutes and regulations in force:

- Ancient Monuments and Archaeological Sites and Remains Act & Rules, 1959.
- Andhra Pradesh Ancient and Historical Monuments and Archaeological Sites and Remains Act & Rules, 1960.
- Hyderabad Urban Development Authority's Regulations of 1995, 1998 & 2000 under APUA (D) Act, 1975.
- Municipal Corporation of Hyderabad Acts and Rules.

Heritage Property	Ownership	Agencies of management	Area Jurisdictions	Statutes/ Regulations
Charminar	Public	Central government agency: A.S.I (Archaeological Survey of India)	100mts of prohibitory area & 200mts of regulated area around Charminar	Ancient Monuments and Archaeological Sites and Remains Act, 1958: Rules 1959
Mecca Masjid	Public	State government agency: D.A.M, Department of Archaeology and Museums, Andhra Pradesh	100mts of prohibitory area & 50mts of regulated area around the Mecca Masjid	Andhra Pradesh Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1960
Shahi Jilau Khana Gate	Public	Local government agency: GHMC (Greater Hyderabad Municipal Corporation) through HUDA (Hyderabad Urban Development Authority) regulations	Only the Gate	Hyderabad Urban Development Authority's Regulations of 1995, 1998 & 2000 under APUA (D) Act, 1975. Municipal Corporation of Hyderabad Acts and Rules
Homeopathy hospital	Private	- do -	Only the hospital	- do -
Mehboob Chowk	Public	- do -	Only the building	- do -
Clock Tower	Public	- do -	Only the tower	- do -
Shops	Private/ Leased/ Rented	- do -	Only the shops	- do -

Table 1. Heritage components & regulations multiplicity

Managing agencies at different levels and different properties in the same area

- a. Archaeological Survey of India (A.S.I)
- b. State Department of Archaeology & Museums (D.A.M)
- c. Greater Hyderabad Municipal Corporation (GHMC)
- d. Hyderabad Urban Development Authority (H.U.D.A)

Agencies coordinating services

- a. Electricity department
- b. Water Supply and Sewage Board
- c. Roads and Buildings department
- d. Property Tax department
- e. Income Tax department, Services Tax department, Commercial Tax department, Sale tax department.
- f. Land Acquisition department

As observed from above, there is requirement for coordination of all the agencies in order to ensure the success of heritage management.

2.0 Issues confronting Charminar Pedestrianisation Project (CPP) area

Stakeholders, Shopkeepers and the residents have made transformations that are non-confirming with the heritage standards in terms of architecture, construction and usage. Lack of any administrative will to enforce the legislation is one of the leading issues. Disputes arising out of road widening, demolitions, encroachments that have damaged the heritage properties like shops, residential properties along the inner ring road are some of those that have entered an adversary process in courts.

It is clearly evident that stark violations in byelaws with regards to height of buildings, constructions etc., which could have been punished on par with legal wrong was overlooked since a long time due to various reasons. This has also played a major role in shaping the mind-set of local community that the government is not interested in heritage management. Mainly, it is non-enforcement of regulations, which is also leading to more disputes.

Redevelopments attached to architecture, construction materials usage, plots re-sizing etc., in this economically active place like Lad Bazaar is surely creating disputes with one side being the Shop keepers and residents, who want to make the shops more presentable and on the other side are the government agencies, whose mandate is to implement the development projects. These disputes, which also take the ugly shape of a civil suit or litigated P.I.L, are not being addressed by the government agencies in a comprehensive manner so as to end such similar disputes forever. The primary objective is to curb the unbalanced and non-integrated insensitive developments within heritage, which are knowingly or unknowingly being practiced by the local community.

Adding to the issues are the growing demands of economics and the daily ascending real estate values that drive the custodians/owners of these heritage properties to pull it down and replace by small volumes of commercial spaces. Here is also a case, wherein, economic

restraints lead to non-maintenance of the heritage properties. It is often seen that these white-elephant like properties are given silent and slow death by not providing it with small doses of timely and planned maintenance. It is seen as a clever ploy to let the structure slip away from poor maintained to the dilapidated state and finally crumble down. This 'unsafe structure' is now pulled down very earnestly and replaced by a monstrous non-confirming building.

Non-appointment of professionals to supervise the new developments also is a major factor of influence. The role of a professional architect or engineer is clearly mentioned as the one, who supervises any construction activity on behalf of the client/owner. The problem often arises when the professionals are not appointed. The scenario of insensitive developments becomes more serious when lots of financial resources are invested and the parties are facing notices from the state agencies to comply with rules. This is just the beginning of the dispute and such civil cases keep on dragging for ages while the heritage becomes a silent sufferer. In the absence of a professional supervisor to be held accountable for, the state agencies realize that they now have to confront the parties directly. These parties, who want to save and survive through the invested financial resources, are now put through the adversary process of courts. The procedural code makes the situation even more pathetic, which results in the growing resentment towards the heritage structure and its maintenance. The 2002 road-widening and the demolition activity has prompted a PIL (W.P no: 20387/2001) to be filed by an NGO praying the High Court to direct the whole process to be authorized/supervised by the Hyderabad Heritage Conservation Committee (HHCC). This dispute also brought about unification of majority of shopkeepers and residents and saw the formation of Lad Bazaar Shopkeepers Association.

3.0 Subject matter and its scope within the dispute resolution mechanisms

Heritage management envisages management of a resource, that is a product of past and is continuing to inspire the present and which needs to be protected for the future generations as a knowledge base to appreciate and learn. Measures to safeguard this unique and irrecoverable property are to be sensitive to the community around it also. It is pragmatic that the community involvement is of a higher significance in order to protect this valuable heritage. The disputes which the management faces in view of the growing urbanization needs and the gravity of the new dangers that threaten the heritage, magnifies the importance of immediately addressing the issues. It is in this time to note that even though there is no single authority that is managing heritage, the disputes are arising from all the quarters of the society. The multiplicity of agencies and their overlapping jurisdictions also need to be addressed by the dispute resolution mechanisms.

When the question arises as to what would be the scope of dispute resolution, we need to observe the kind of parties that may be involved. On one side are the state agencies like A.S.I, G.H.M.C, and H.U.D.A at different levels as against the numerous residents, shopkeepers and people living attached/within or around these heritage structures. Disputes could arise out of land possession, services, infrastructure, inhabitation, non-compliance to the regulations/municipal byelaws etc. One party could see this dispute as gross violation of laws

and the other party could protest citing incapacity/non-understanding of the guidelines of heritage management.

The disputing parties can be individual/a group of individuals/residents/associations of shopkeepers/community at large. Even though these civil cases keep hanging over, the parties become even more hostile to the heritage structure. This heritage structure, that is a matter of pride, is now seen as a cause of the ongoing miseries. This situation is even more dangerous as community loses interest and tends to neglect the heritage structure in the near future. Thus, it is clearly established that the heritage property will now perish as its association with the immediate surroundings and community is cut off.

After observing the above few scenarios, it is imperative to address the setting up of a dispute resolution mechanism that can fasten the dispute addressing system and provide relief to the aggrieved heritage structures. The concept of living heritage i.e., people living and maintaining the heritage structure is not yet within the policy of heritage protection. It is still monument-centric, i.e. the focus is the structure itself and does not include the associated surroundings, people using/associated with it, traditions attached to it or even the original extents of the boundary of the property. The shift in approach from 'monument-centric' to 'living-heritage' will create a conducive atmosphere for the management and the disputing parties to address the issues and find a solution.

4.0 Prevalent dispute resolution mechanisms

The disputes related to heritage are matters of the public domain. It apparently becomes a public interest to observe that the management is well within the established norms and caters to all levels of community (stakeholders, agencies, tourists etc). The dispute resolution mechanism in place today is litigative and of an adversary nature. As one observes the number of cases/dispute resolutions, the majority of them are through Public Interest Litigations [PILs]. Having mentioned PIL, it becomes necessary to also mention the facts and nature of PIL. The purpose of P.I.L is "to promote the public interest, which mandates that violation of legal or constitutional rights of a large number of persons; poor, downtrodden, ignorant, socially or economically disadvantaged should not go un-redressed". Apex Court has laid down following principles regarding Public Interest Litigation. It is as followsⁱ

- 4.1** Bonafide 'public intention' by the party filling PIL.
 - 4.2** To uphold the basic human rights of deprived / weaker sections of the society.
 - 4.3** To set off the executive in discharging its constitutional and legal obligations obligation.
 - 4.4** The petitioner must inspire the confidence of the Court and must be above suspicion.
 - 4.5** To assure social, economic and political justice.
 - 4.6** The High Court while entertaining PIL must indicate how the public interest is involved in the case.
 - 4.7** To assail the illegality of the offending action and no third party has a *locus standi* to canvass the legality or correctness of the action.
 - 4.8** The Courts can interfere only where legal rights are involved and in fact, legal wrong requires judicially enforceable right.
 - 4.9** No person has a right to waiver of the *locus standi* rule and Court should permit PIL only when it is satisfied that the carriage of proceedings is in the competent hands of a person, who is
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genuinely concerned in public interest and is not moved by other extraneous considerations.

- 4.10 The Court should be conscious and try to ascertain the *bona fides* of the petitioner. A person should approach the Court not only with clean hands but with clean mind, clean heart and with clean objectives.
- 4.11 The Courts must do justice by promotion of good social balance and refuse to interfere where it is against the social interest and public good.
- 4.12 Easy access to justice should not be misused as a license to file misconceived and frivolous petitions.

Thus, while going through the facts of P.I.L it is noted that there can be merits and demerits of this non-litigative dispute resolution mechanism. Litigative & adversary dispute resolution mechanisms even though have settled disputes in heritage management, but also have consumed an enormous amount of time and energy of the court and the parties, all while running the risk of deteriorating heritage and non-technical actions.

5.0 Scope of ADR methods within heritage management

Various mechanisms of dispute resolution i.e., negotiation, conciliation, mediation, expert appraisal, mini-trial, early neutral evaluation, and arbitration are today sought after by practitioners. The case wherein all/some of them can be intrinsically used to address the issues in heritage management is one of the primary endeavors. Some of the definitions of these ADR methods are as follows: ⁱⁱ

- 5.1 Negotiation is a process initiated by the parties themselves in resolving the dispute.
- 5.2 Mediation is a structured negotiation process.
- 5.3 Conciliation is a process similar to mediation used in agencies that administer rights granted under legislation and in tribunals or courts.
- 5.4 Expert Appraisal is a process in which an independent expert investigates and gives a non-binding opinion on the issues.
- 5.5 Mini Trial or case Presentations in which each side presents a condensed version of their case to a meeting of senior executives from both parties who may then agree to a settlement.
- 5.6 Early Neutral Evaluation It is a process where a non-binding reasoned evaluation is obtained by the parties based on the merits of the case, from an experienced neutral third party.
- 5.7 Arbitration is a private determination of the controversial issue by a neutral party, who can make a binding award.

6.0 Scope of Arbitration and Conciliation Act for heritage management

Some disputes like possession of land, land partition, implementation of certain regulations are not enforceable due to various reasons and this is when the parties that could be local community members and the state agencies enter into an agreement to solve the differences through arbitration. Arbitration, compared to other methods of ADR is more formal and in a situation where in the other party is liable to enter into a litigative mode, the state agency can effectively enter into arbitration. An early neutral evaluation, wherein, situation appraisal & other technicalities involved can be taken up by an experienced neutral third party as one of the supplementary option. The process of arbitration begins once both the parties have

entered into an agreement to solve their dispute through arbitration. This agreement, which is in written form, binds both the parties to appoint the arbitrator/s for dispute resolution. It is here where the Arbitration and Conciliation Act 1996 would have to be followed to effectively address the dispute.

Heritage Property	Type of Dispute	Probable parties involved	Nature of parties	Kind of dispute resolution mechanism	Remarks
1.Charminar	Pertaining to 100mts, 200mts regulations	A.S.I, private parties	Govt. agencies/ private owners, Residents, Shopkeeper.	Litigative notices and time consuming court processes Negotiations Expert Appraisal Early neutral evaluation Arbitration	Imposing regulations through Court orders. Negotiations offering compensation. New formula for co-existence with new regulations. Both parties can get third party opinions. The parties enter into agreement and are bounded by A&C Act 1996 for settlement/dispute resolution
2.Mecca Masjid	Pertaining to 100mts, 50mts regulations	D.A.M, private parties and slum dwellers.	Govt. agencies/ private owners, Residents,	Litigative notices and time consuming court processes Negotiation Expert Appraisal Arbitration	Imposing regulations through Court orders. Negotiations offering compensation and rehabilitation. New formula for co-existence with new regulations and better-upgraded infrastructure. The parties enter into agreement and are bounded by A&C Act 1996 for settlement/dispute resolution
3.Homeopathy hospital	Pertaining to reuse of hospital and regulating the surrounding buildings for sensitive development	M.C.H, property owner and immediate neighbours	Govt. agencies/ private owners, Residents,	Mediation Negotiation Expert Appraisal Arbitration	New construction regulations on neighbours and supervision by MCH Negotiations offering compensation and rehabilitation in case of shifting of premises. New formula for co-existence with new design and new use for property. The parties enter into agreement and are bounded by A&C Act 1996 for settlement/dispute resolution

4.Shahi Jilau Khana Gate	Pertaining to maintenance of gate and regulating the surrounding shopkeepers for sensitive up keeping of gate	M.C.H, and immediate shopkeepers	Govt. agencies/ private shopkeeper	Mediation Negotiation Expert Appraisal Arbitration	New maintenance regulations on shopkeepers and supervision by MCH Negotiations offering compensation and rehabilitation in case of shifting of shops. New formula for co-existence with new design and new materials for shops construction The parties enter into agreement and are bounded by A&C Act 1996 for settlement/dispute resolution
5.Shops of Lad Bazaar	Pertaining to maintenance of original shops and regulating the neighbouring shopkeepers for sensitive up keeping of shops	M.C.H, and immediate shopkeepers, Lad Bazaar shopkeepers Association.	Govt. agencies/ private shopkeepers	Mediation Negotiation Expert Appraisal Arbitration	New maintenance regulations on shopkeepers and supervision by MCH Negotiations offering loans to maintain the shops (interiors and exteriors) New formula for co-existence with new design and new materials for shops reconstruction The parties enter into agreement and are bounded by A&C Act 1996 for settlement/dispute resolution
6.Services coordination by other State agencies	Pertaining to maintenance of services like roads, electricity, water supply, sewage cleaning, communications ,	M.C.H,	Govt. agencies/ private shopkeeper	Mediation Negotiation Expert Appraisal Arbitration	New maintenance regulations on shopkeepers and supervision by MCH Negotiations offering loans to maintain the shops (interiors and exteriors) New formula for co-existence with new design and new materials for shops reconstruction The parties enter into agreement and are bounded by A&C Act 1996 for settlement/dispute resolution

Table 2. Scope of ADR methods within heritage management – Case of Charminar Pedestrianisation Project (CPP) Area

End Notes:

ⁱ *Public Interest Litigations, P.M.Bakshi, 2004, Ashoka Law House*

ⁱⁱ ICADR- PGD ADR publication, ADR Methods, Dr.M.Sridhar")

The following are the important aspects to be taken into consideration, so as that the issues can be addressed through the A & C Act 1996.ⁱ

- 6.1 The arbitration is creation of an agreement between the two parties in a dispute and the agreement must contemplate that the decision of the arbitrator/arbitral tribunal shall be binding on the parties to the agreement.
- 6.2 The jurisdiction of the arbitrator/arbitral tribunal should be either from the consent of the parties or from the order of a Court or from any statute.
- 6.3 The parties shall contemplate in the agreement that the substantive rights shall be determined by the agreed arbitral tribunal or arbitrator.
- 6.4 The parties must agree that the arbitrator/ arbitral tribunal shall adjudicate their dispute and the decision so given must be intended to be enforceable in law.
- 6.5 The following issues are non-arbitrable:
 - 6.5.1 Matters relating to Industrial disputes
 - 6.5.2 Issues pertaining to criminal proceedings (examples of human vandalism to the heritage structures, disfigurement, smuggling of idols, antiques etc.)
 - 6.5.3 Issues covered by Rent control Acts
 - 6.5.4 Taxation disputes
 - 6.5.5 Issues arising out of torts
 - 6.5.6 Admiralty issues

On overall observance, Arbitration offers a formal and binding solution and creates a better relational platform and amicable environment for the parties to co-exist and work for better heritage management.

7.0 Is ADR the ideal solution

Arbitration can be resorted to by the parties themselves choosing their own arbitrator and can also take the assistance of institutions like ICADR (International Centre for Alternate Dispute Resolution), ICA (Indian Council of Arbitration). These institutions do not arbitrate, but administer arbitration, i.e., they facilitate arbitration through their enlisted arbitrators. A central government agency like ASI, which manages about 3500 heritage properties can also establish a similar Arbitration Cell, so also the Department of Archaeology and Museums, Andhra Pradesh, which handles similar number of heritage properties. Ombudsman can govern this cell and thus the organization's efficiency can be established. Permanent arbitral institutions, registered under Societies Registration Act or the Companies Act 1956 or by incorporating Arbitration Clause through amendments in the Ancient Monuments and Archaeological Sites and Remains Act, 1958: Rules 1959 and Andhra Pradesh Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1960 can be one of the ideal way of addressing the issues similar to those like Consumer Forum/ Lok Adalats etc. Advantages of arbitration in particular to heritage management:

- 7.1 The parties in dispute can choose their own judge.
- 7.2 The technical experts such as Conservation architects, historians, art restorators, material specialists, archaeologists etc., can be referred for their expertise.
- 7.3 Special attention to such disputes in a bigger quantum can establish a larger framework and system, wherein similar disputes can be speedily solved.

- 7.4** The costs incurred and the time involved, which can harm the sensitive restoration of the heritage property, can be prevented.
- 7.5** In-house training within organizations like Archeological Survey of India, Department of Archaeology and Museums, Andhra Pradesh and other similar institutions can lead to efficient dispute resolution.
- 7.6** The disputes arising in heritage management (except in non-arbitrable matters), can be handled, at whatever stage they might be, as the arbitration agreement can be entered into at any stage like as:
 - 7.6.1** At the time of entering into the contract in anticipation of a dispute; or (example: restoration works being tendered by ASI to contractors, professional consultation from conservation architects etc.,)
 - 7.6.2** When the dispute actually arises (Example: land related disputes within the surroundings of heritage property, regulation enforcing problems etc.,)
 - 7.6.3** When the dispute is taken to a Court of Law. (Example: When shopkeepers of Lad Bazaar file suit/writ against the buffer zone demolition activity).
 - 7.6.4** Even at appellate stage, the parties could prefer to settle the dispute by arbitration.

Note: Dispute resolution mechanisms such as Mediation, Negotiation, Mini-trials, even though having the advantage of time and cost savings, are having no procedural patterns as an arbitration process.

8.0 Conclusion

Having done the exercise of assessing the scope and relevance of ADR methods in heritage management, it is significant to begin on a journey so as to address the disputes through the identified approaches. The field of heritage management is struggling hard to maintain survival of its own, amid balancing between the thin lines of societal development, bad management practices, non-professional conducts, non-commitment of state and existence of hostile community. The change in philosophy should happen, wherein, the anti-development tag of heritage management has to be discarded. Community involvement is absolutely essential in this sphere, in order to make this exercise sustainable. ADR can pave the way for the change in attitude of these management authorities (Government, Non-Government, Professionals etc.) towards a serious and committal stage of addressing the issues and solving them once for all.

Acknowledgements

1. National Academy of Legal Studies and Research (NALSAR) University of Law, Hyderabad
2. The International Centre for Alternative Dispute Resolution (ICADR), Regional Centre, Hyderabad.

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Safeguarding Heritage of Maharashtra – A legal Perspective

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About:

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Abstract

Discussing the specific case of Pune, this paper tries to unveil the legal provisions pertaining to heritage conservation, and the lacunae in protection when it concerns to building centric conservation practices. It projects the need for a holistic approach to acknowledge the modern and contemporary heritage in the legal protection framework for sustainable conservation practices.

Keywords

Heritage Conservation, Legal Protection Framework, Cultural Resources

1.0 Introduction

The scope of conservation practices is expanding day by day with changing concept of heritage. However, these changes do not respond very promptly at administrative levels. This inevitably results in challenges of different nature and magnitude in practices. It is not necessary to devise new legislation for new challenges all the time but many times the existing legal provisions under existing acts can be taken to advantage in order to achieve our goals. Heritage conservation practices gained momentum in India during the 80's after the establishment of INTACH, though the tradition of protecting ancient treasures existed much before that under the guise of Archaeological Survey of India. The paper tries to critically examine the existing legal provisions for Heritage conservation for the state of Maharashtra and discusses the case of Pune for proposed conservation provisions.

2.0 Maharashtra at a glance

Maharashtra covers Central and western part of the country. Maharashtra is the third largest state in India covering 307 square kilometres of land and is bestowed with 840 km long coastal line. It is the third most urbanized state with 45.2% of its population being urban population. Maharashtra has 35 districts, 35 tehsils, 534 towns and 43,665 villages (Maharashtra National Disaster Risk Reduction Portal). This statistics gives us an idea of urban rural division.

Maharashtra has three physiographical divisions as – Coastal area, Western Ghats and plateau. This also gets reflected in cultural regions of Maharashtra. Maharashtra has five cultural regions namely, Konkan, Desh, Marathwada, Vidarbha and Khandesh. Broadly Konkan region includes Mumbai and other coastal area, Desh includes Pune region. Marathwada comprises of Aurangabad region, Vidarbha covers Nagpur region while Khandesh covers Nasik region.

Geography of Maharashtra is marked by Sahyadri hill ranges mainly running parallel to the coast in north-south direction while many offshoots run eastwards. These include Satmala, Ajanta, Harischandra, Balaghat and Mahadeo ranges. Godavari, Krishna, Bhima and Tapi are the main rivers of Maharashtra.

History of Maharashtra covers a period from megalithic times to the present day. Maharashtra as a cultural region gained its identity from 6th century A.D. onwards as argued by scholars (Rajguru S: Pappu, 2014), though the remains of Satvahana period predates this era. Satvahanas, Vakatakas, Chalukyas, Rashtrakutas, Yadavas, Shilaharas, Bahamani Sultanates, Deccan sultanates, Marathas and British ruled this part or whole of this region in different periods. Each era contributed to the rich heritage of Maharashtra. This resulted in formation of a diverse and rich heritage types. Famous Craft traditions of Maharashtra include *Paithani*ⁱ weaving, Leather footwear from Kolhapur, *Himroo*ⁱⁱ shawls of Aurangabad etc. Maharashtra is equally rich in its performing art traditions like Powada (Ballads narrating history), Lavani (Dance form) and *Kirtana* (devotional song recitation). The built heritage of Maharashtra is also very rich with varied typologies. The paradigm shift in conservation practices has only added to the list of built heritage.

Today the scope of heritage extends to include cultural regions as well as historic areas along with individual buildings and monuments. The rugged nature of geography of Maharashtra

has also given rise to a unique typology called hill forts of Maharashtra. There are nearly 400 forts in Maharashtra. Many of them are hill forts, located in remote areas. There are nearly 80 island forts. Religious structures belonging to different eras, institutional buildings, public architecture, traditional neighborhoods, commercial lanes, occupational lanes (Photo1), vernacular residences, sacred places, historic landscapes all form part of the built heritage spectrum. Most of the heritage is unattended, not documented and hence very vulnerable.

3.0 Current State of Protection

Maharashtra has four built world heritage sites out of 26, namely Ajanta caves, Ellora caves, Elephanta caves and Chhatrapati Shivaji Terminus (erstwhile Victoria Terminus) and one natural heritage site of Western Ghats.

Archaeological Survey of India has a custody of 285 monuments in three circles as Mumbai (117 Nos.), Nagpur (93 Nos.) and Aurangabad (75 Nos.). State Archaeology department protects 244 monuments. CAG report (Comptroller and Auditor General of India, 2013) highlights 8 missing monuments from the list.

Other government initiatives for heritage conservation included JNNURM scheme (Jawaharlal Nehru National Urban Renewal Mission with focus on Heritage). In Maharashtra only two municipal bodies- Nasik and Nanded applied for Heritage funds. The appraisal report of Nasik (JNNURM, 2010) however mentions of development activities like infrastructure upgradation, ghat development, night shelters and river bank protection. Nanded (JNNURM, 2010) report gives a conservation plan.

The newly launched government initiatives- HRIDAY (Heritage City Development and Augmentation Yojana, 2015) and PRASAD (National Mission on Pilgrimage Rejuvenation and Spiritual Augmentation Drive, 2015) does not include any town from Maharashtra.

A primary study revealed that only eight local governing bodies have Heritage cell in place. It is functional in even lesser governing bodies. The process of listing has been completed by ten local authorities. The picture is grim as urbanization is faster in Maharashtra.

Mumbai is however credited to have first heritage legislation in the country in 1995. It was backed by section 46 of MRTP Act. Heritage as a concept was made more holistic to include heritage with cultural, social and historic values. The scope of conservation practices expanded to cover precincts. It became a model legislation to be followed elsewhere later.

4.0 Legal Provisions Pertaining to Heritage Conservation

There are acts and legal provisions that can be used as tools for conserving heritage. It mainly includes Ancient Monuments Act (1958), Amendment act (2010), Town and country planning acts, cantonment act, and Coastal Regulation Zone notification.

Ancient Monument act has already given protection to the monuments in the custody of Archaeological Survey of India. Provision of 100 meters and 200 meters of regulated and buffer zone respectively can be stringently implemented due to Amendment Act, 2010.

Maharashtra Regional Town Planning act, 1966 (MRTP) was considered to be model town planning act and had been adopted by other states. This was amended in 1994. This has been effectively used to get heritage legislation in place in case of Mumbai.

Maharashtra has seven cantonments out of 62. Cantonments are best specimens of colonial heritage in India. Section 64 of Cantonment act gives provisions for heritage conservation (Chainani, 2009).

Other legislation of which provisions can be used for heritage conservation includes Coastal Regulation Zone notification (CRZ). It mentions of restrictions on constructions within 500 meters of high tide line. The distance is even lesser for rivers, creeks and backwaters. This is a boon for all island forts and heritage structures on coastal line, if strictly implemented.

Environmental Protection act, 1986 has made provisions for conservation of natural as well as manmade heritage. Mahabaleshwar Panchgani had been declared as an eco-sensitive zone using this Act.

Conservation studies point at Rent Control Act provisions as one of the main reasons for the apathy of built heritage in urban areas. Amended Rent control act, 1999 gives exemptions but heritage properties as a category for exemption is missing from the list. Inclusion of Heritage properties in exemption list will definitely help improving state of heritage conservation.

Pune earlier known as Poona is an important metropolis of Maharashtra with a population of approximately 3.5 million. Pune is located southeast of Mumbai, the capital of Maharashtra at approximately 140 kilometres. It rose to prominence in 18th century after becoming a political centre of *Peshwa*ⁱⁱⁱ, who controlled most of the country then.

Historic Pune has 18 *Peth*^{iv}. It grew along the river Mutha. Peshwa's fortified mansion Shaniwar Wada, a national monument along with many courtyard residences, temples, institutional buildings, public architecture and traditional occupational lanes forms the part of built heritage of Pune. Its growth as an Industrial and Information technology hub along with educational centre has led to intense developmental pressures and an effective legislation is definitely needed to safeguard its cultural heritage.

Pune has three monuments protected by Archaeological Survey of India as Pataleshwar Caves, Shaniwar Wada and Agakhan Palace. Four monuments are in the custody of State Archaeology. Pune Municipal Corporation has a heritage cell functioning for past 20 years. It has documented the heritage structures of the city. The list includes 245 heritage structures. Following the footsteps of Mumbai experience, Pune Municipal Corporation has incorporated

many provisions for heritage conservation in its draft Development plan proposal (2007-2027).

Highlights of the provisions are,

- a. Heritage list is incorporated in draft development plan, thereby assuring protection.
- b. Conservation interventions conform to the prevalent grading system and desired interventions.
- c. Provision of TDR (Transferrable Development Rights)
- d. Provision of conservation Funds and other incentives
- e. Exclusive rights to local authorities to safeguard heritage

5.0 Challenges Ahead

Despite provisions for heritage conservation in development process, there are critical issues needed to be addressed for desired results. It ranges from issue of multiple agencies involved in the process to satisfactory implementation of the provisions.

There is a need to redefine heritage in the changed scenario to safeguard the spirit of the place. Case of landscape element *Par*^v can be discussed in this context. Historic Pune had many *Pars* that used to be an assembly place in old days. It is an important feature of medieval towns of Maharashtra that used to ensure environment friendly townscape. Today many of the *pars* are erased and remaining are transformed in to traffic islands. These landscape features demand a sensitive approach in planning process. Erstwhile water supply system of Peshwa era could have been turned in to a meaningful resource, had it been recognized as a resource earlier. Today the system has become defunct due to development along its route. The scope of built heritage itself needs to be redefined.

6.0 Conclusion

The concept of heritage at administrative level does not acknowledge contemporary heritage till date making it vulnerable. Modern and contemporary structures are not included in the heritage list.

The building centric conservation practices do not take into account other forms of cultural resources. Conservation practices should be made more holistic to include these resources. Pune has been a cultural hub hosting many institutions, and artists belonging to different art schools. Its cognizance should be taken for sustainable conservation practices.

Contemporary conservation practices lack appropriate intelligent and sensitive models.

Thus it can be concluded that for sustainable conservation practices a more holistic approach is desired for interventions aided by appropriate legal tools.

End notes:

- ⁱ Traditional weave of Maharashtra
- ⁱⁱ Fabric made of silk and cotton, locally grown in Aurangabad since Tughlaq times
- ⁱⁱⁱ Prime ministers of Maratha Empire, word originated in Persian language adopted in Marathi later.
- ^{iv} Traditional neighborhood of mediaeval Maratha town
- ^v Platform built around trees that used to be a place of assembly in historic towns.

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Heritage Protection in Delhi – The Myopic Approach

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Nisar Khan completed M.Arch with specialization in Urban conservation and Heritage Management from SPA, New Delhi. He is presently Assistant Professor at the Faculty of Architecture and Ekistics, Jamia Milia Islamia, New Delhi. He has the distinction of working in the team formulating Hampi World Heritage Management Plan.

He is interested in working on formulating strategy, Policy and Management of Cultural Heritage and Tourism.

Abstract

The paper discusses the state of unprotected built heritage of Delhi in a post independent scenario, where rapid urbanization and sudden migration caused immense pressure on the built heritage. In the backdrop of post independent urban planning process with its successive masterplans of 1962, 2001 and 2021, the endangered state of this large repository of unprotected built heritage is analyzed here. It also stresses on the need for inclusion of unprotected built heritage in the masterplans in the form of listing and mapping on the land-use map which can impart necessary protection.

Keywords

Unprotected Heritage, Redevelopment, Masterplan, Heritage Zones

1.0 State of Protection of the Built Heritage of Delhi

Delhi is a historic city with large repository of built heritage comparable to the likes of Rome, Istanbul and Egypt. It has three World Heritage Sites namely Qutub Minar (12th Century A.D.), Humayun's Tomb (16th Century A.D.) and Red Fort (17th Century A.D.) protected under the UNESCO framework, while another 174 structures are protected under the central government agency Archeological Survey of Indiaⁱ (ASI). ASI is a central agency which operates under Ancient Monuments and Archeological Sites and Remains Act (AMASR ACT-1958) and its subsequent amendments.

The list of protected monuments, however, covers only a fraction of the entire built heritage in the city and there are large numbers of structures which are unprotected. A listing prepared by Maulana Zafar Hasan in 1920's identified a total of 1317 structures of heritage significance.ⁱⁱ Another listing prepared by INTACHⁱⁱⁱ in 1996 could find 1200 structures from the Zafar Hasan's listing, implying that almost 117 structures were either lost or transformed beyond recognition during the period of almost 70 years.^{iv}

The unprotected built heritage of Delhi is interspersed on a vast area known as National Capital Territory, which was defined by the location and boundaries of the group of erstwhile seven major historic cities^v and numerous villages in the surroundings. The vulnerability of this unprotected built heritage can be gauged by the situation that even among the 174 structures listed and protected under ASI, 12 were reported lost in an official survey and audit conducted in the year 2009.^{vi} It is not difficult to comprehend that in the absence of any legal protection; majority of the unprotected structures are encroached or exist in a severely dilapidated state. The threat to unprotected heritage has multiplied due to rapid and large scale urbanization of the city that occurred after independence.

India attained independence from British rule in the year 1947, which led to a migration of large population into the city from newly partitioned Pakistan and also from small towns in the surrounding region. The sudden flux of migration increased the population of the city from 7 lacs to 17 lacs, causing an immense pressure on the infrastructure and built heritage.

The migrant population started settling down in the heritage structures like Old Fort, Humayun's Tomb, Khirki Masjid, Begumpuri Masjid to name a few.^{vii} Although most of these monuments, which enjoyed the protection under ASI, were evacuated of refugees, many smaller unprotected structures were never evacuated of the refugees and are now lost or entirely encroached. The tomb of Sheikh Ali, located at the roundabout of Defense Colony is a prominent example, which is encroached and converted into the office of the Resident Welfare Association. The elegant Lodhi period tomb is drastically altered by removing the grave, closing arch openings by constructing walls, adding toilet block, flooring, air-conditioning, plumbing, wall paint, tiles etc.^{viii}

Most of the Havelis of Shahjahanabad^{ix} (or Old Delhi) was allocated to the refugees from Pakistan. In many cases havelis were sub-divided to accommodate many families of the refugees. This resulted in drastic alterations of these havelis and irreversible degradation of the entire historic city of Shahjahanabad. Since a majority of these structures were not-protected, they bore the brunt of rapid urbanization.

The most intriguing aspect is that damage to the unprotected built heritage continued even after the independence. The entire process of urban planning through three successive Master Plans of 1962, 2001 and 2021 respectively, failed to provide any protection to this large repository of unprotected built heritage. The following section discusses in detail the conflicts.

2.0 Master Plans of Delhi and Protection of the Built heritage

Although modern city planning was introduced with the construction of Lutyen's Delhi from 1911 to 1931, the major urban expansion took place after independence. After a period of 10 years from independence, Delhi Development Authority (DDA) was formed in 1957 as per the provisions of DDA Act (1957) with the objective to develop Delhi in a planned manner.^x Consequentially, in the year 1962, the First Master Plan of Delhi (MPD1962) was released by the DDA, as the vision document and instrument for the organized and structured urban development of the city. It was a comprehensive document to meet the huge demand of housings, offices, institutions, commercial areas and infrastructure for the urban expansion of the city. Large tracts of land (25000 hectares) falling under the territory of Delhi were notified for acquisition by the Government of India to accommodate these various functions for a target population of almost 5 million, till the year 1981.^{xi}

The emphasis of the MPD1962 was entirely on the new development, it ignored the task of protecting the built heritage of the city. In the entire Master Plan document no chapter or section mentioned about built heritage of the city and its protection. Moreover, the proposed land-use plan as given in the master plan didn't denote the heritage structures or precincts.

The entire city of Shahjahanabad was treated as slum in the MPD1962, perhaps in consideration to the degraded built environment.^{xii} In the Master Plan document the old city is described as congested, unsanitary and full of industrial activity with a population density of 350 persons per acre, existing at that time.^{xiii} Similar to the slums, Master Plan proposed large scale clearance and redevelopment as a long term solution to the conditions of Shahjahanabad, but remained shy of implementation by acknowledging the limitations of resources. It proposes interim provisions of providing community facilities by demolishing dilapidated buildings and acquiring them by the Municipal Council of Delhi (MCD).^{xiv} Further, some 17 major roads in the old city were identified for widening for traffic circulation.^{xv} Also, the traditional markets of Chandni Chowk, Khari Baoli, Nai Sarak, Chawri Bazar, Kashmere Gate and Faiz Bazar were proposed for redevelopment as commercial areas.^{xvi}

The city was divided into 8 Planning Divisions with Old City (Shahjahanabad) being one. Each Planning division was further subdivided into development zones with an objective to prepare development plans as per land-use plan of MPD1962. These Zonal Development Plans were given the mandate of planning residential areas, community facilities, parks and roads, without mentioning about the built heritage.^{xvii} Shahjahanabad Planning Division was subdivided into 28 development zones, but the objective remained redevelopment or provision of basic community facilities for which special (reduced) space standards were provided in the Table 7 of the MPD1962.^{xviii}

The redevelopment approach of the MPD1962 was similar to that adopted in case of slums,

while the city of Shahjahanabad was the magnificent Mughal capital, which went into decline after the revolt of 1857, when British undertook large scale demolitions. The redevelopment approach deprived the built heritage of Shahjahanabad any crucial legal protection that a statutory document like Master Plan could have provided, resulting in severe alterations like demolition and subdivision of large number of heritage buildings and extreme transformation of urban heritage, which is still continuing. The citadel, Red Fort (originally called Qila-i-Mubarak) and major existing gates along with segments of the fortification^{xix} were part of the protected listing under ASI, thus are found in a fairly preserved state.

Beyond the city of Shahjahanabad, large tracts of land was notified for development, which also included numerous unprotected heritage structures and historic settlements comprising of fortification walls, tombs, mosque, hauz, baoli, sarai, kos-minar etc. With the acquisition of land the jurisdiction and ownership of the heritage structures naturally fell under the domain of DDA. However, in many cases the planning of new housings and other functions in the city was in conflict with the built heritage. As an example, DDA housing at Shalimar Bagh is built over the Mughal era terraced garden complex with the same name. This garden is the counterpart of magnificent terraced gardens built at Lahore and Srinagar with the same name. It was at this garden that the coronation of Aurangzeb took place. Now only one terrace with Sheesh Mahal remains while the remaining part of the garden is consumed by the housing constructed by the DDA. Similarly, the district centre of Saket is located on the site of Hauz Rani, a large water tank similar to Hauz Khas and Hauz-i-Shamsi.

The entire Press Club Road from Sheikh Sarai to Mehrauli is located on the location of the fortification walls of Jahanpanah with Satpula dam still existing as the remnant, while the Mehrauli-Gurgaon road was constructed by demolishing the Sultanate era causeway connecting Tughlakabad Fort with the Tomb of Ghiyasuddin Tughlaq. In another case, a full-fledged Delhi Government ITI campus was constructed inside the Arab Ki Sarai, which is ironically adjacent to the World Heritage Site of Humayun's Tomb. A Mughal period mosque and Lodhi era tomb inside the Arab ki Sarai are lying in extreme dilapidated state, despite situated within the working campus of the government institution. Many other cases where unprotected heritage structures located in nook and corners of the modern residential areas are seen in Defence Colony, Green Park, Kidwai Nagar, South Extension etc.

While, it was pertinent to provide protection to the unprotected heritage structures, MPD 1962 didn't make any provision for the identification and mapping of the same. This was an elementary task, with the listing of Maulana Zafar Hasan and various British Survey Maps already available. Further, as the statutory instrument with legal mandate to undertake modern urban development, the MPD1962 drastically failed in protecting the unprotected heritage structures by formulating land-use and building regulations appropriate for the built heritage of the city.

It might appear that the lapse on part of the MPD1962 might have been due to ignorance, but it is rather surprising that the Interim General Plan prepared in the year 1955 prior to the MPD1962 by the Ministry of Health did include a layer of major heritage buildings in Delhi and also suggested various conservation and redevelopment projects. These, however do not find any mention in the DDA Act 1957 and MPD 1962.^{xx} The MPD1962 was in effect till 1981 and

this period of almost 20 years witnessed irreversible damage **already done** to the layer of unprotected built heritage.

The successive Master Plans of 2001 and 2021 (current) continued to focus on the urban expansion and development while providing inadequate legal and policy provisions for the protection of the unprotected built heritage of Delhi.

The Master Plan of 2001 released in the year 1990 designated Shahjahanabad as ‘Special Area’ without defining it or framing any policy for identification and conservation of its heritage.

The MPD2021 introduced a brief chapter on ‘Conservation and Heritage’ proposing the concepts of ‘Heritage Zones, Archeological Parks and Development of Special Conservation Plans’^{xxi}. It proposed the coordination between ASI and other agencies responsible for the protection of the built heritage and also proposed to prepare a listing of the heritage structures. However, the Master Plan again failed to include a list of such structures and mapping them on the land-use maps of city imparting them with a state of protection. While, it further proposes development of 6 heritage zones namely, Shahjahanabad, Lutyen’s Bungalow Zone, Nizamuddin and Humayun’s Tomb Complex, Mehrauli, Begumpur- Bijai Mandal and Chiragh Dilli along with designating 3 Archeological Parks namely, Mehrauli, Tughlakabad and SultanGarhi^{xxii}, the crucial information of demarcating a boundary on land-use maps and including a list of structures to be included was not provided, resulting in a situation of anomaly with respect to the state of protection of these zones or structures. The mapping and listing of built heritage is also crucial for the implementation of any of the proposals given in the MPD2021 because the lapse of many decades since the release of MPD1962 has resulted in the destruction of significant numbers of these structures.

The designation of ‘Special Area’ to Shahjahanabad is continued in the current Master Plan 2021(MPD2021) along with the redevelopment approach and restructuring and widening of the streets. This Master Plan introduces the idea of Tradable FAR for the purpose of redevelopment without providing any details. In another proposal depicting the redevelopment approach, streets widths are proposed to be of uniform width as per their length, which might require demolition of heritage buildings.^{xxiii}

3.0 Case of Modern Built Heritage

Beyond the medieval era listing of Zafar Hasan, built heritage belonging to the modern period falls under the unprotected category. Large number of buildings built during British rule and post-independence period are representative of the modern built heritage of the city. This set includes Colonial architecture of Delhi, Indo-Deco architecture of 1930s and Post Modern architecture of independent India.

The absence of protection for the modern built heritage is resulting in the dilapidated state and even demolition in many cases e.g. Chanakya Cinema (built 1970) perhaps the only example of brutal architecture in the city was demolished in 2007 to give way for a multiplex under New Delhi Municipal Council (NDMC).^{xxiv} Similarly, another iconic example of modern architecture Hall of Nations (built 1972) and designed by eminent architect Raj Rewal^{xxv} was

demolished very recently in April 2017 to make way for the redevelopment proposal of the Pragati Maidan.^{xxvi}

There are many buildings designed by eminent architects like Habib Rahman, Kuldeep Singh, Raj Rewal, Charles Correa, J.A. Stein, Shiv Nath Prasad^{xxvii} to name a few, that represent the modern built heritage of the city but do not qualify under the protected category as the AMASR Act and SAD Act both stipulate 100 years age of a building to notify as heritage.^{xxviii} Ironically, it appears that this layer of built heritage will be lost to the redevelopment before it attains the age of legal protection i.e. 100 years.

4.0 Conclusion

The built heritage of Delhi suffers from the 'Problem of Plenty'. The status of protection is limited to a small part representative of major and monumental category of buildings. The smaller structures are deprived of any protection, although they are equally important as they complete the layer of built heritage in the city. Similarly, the modern built heritage is a testimony of India's rise and progress after the independence. The buildings after independence mark important events in the modern history of the country.

In the absence of any legal status of protection these structures are vulnerable with many of them already lost or encroached upon. While, it does not seem possible to include them in ASI list of protected monuments, the alternative can be through the Master Plans. Since the Master Plans are statutory documents with legal sanction, the inclusion of unprotected built heritage in the form of listing and mapping on the land-use map will impart necessary protection for posterity. Since the Master Plans of Delhi are largely replicated in rest of the country, the protection of urban built heritage in other historic cities can also be extended.

End notes:

ⁱ ASI was created by the British in 1861 for the conservation and protection of the built heritage.

ⁱⁱ http://www.asi.nic.in/asi_aboutus_history.asp

ⁱⁱⁱ The listing is published in four volumes and is considered a significant repository of information on the built heritage of the city prior to the urban transformation witnessed prior to the building of New Delhi. Khan, N. (2012). "An Approach for the Holistic Conservation of the Non-Classified Built Heritage of Delhi." *Journal of Architecture (JOA)* 3(December 2012): 88-93.

^{iv} INTACH- Indian National Trust for Art, Culture and Heritage is a major NGO undertaking a variety of heritage conservation work with its Head Office in Delhi and Regional Chapter across country.

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^{vii} <http://archive.indianexpress.com/news/delhi-has-lost-12-monuments/496206/>

^{viii} One can easily find marks of soot deposit from cooking activities as an evidence of time when these structures were used as the shelter by refugees and migrants.

^{ix} Khan, N. (2012). "An Approach for the Holistic Conservation of the Non-Classified Built Heritage of Delhi." *Journal of Architecture (JOA)* 3(December 2012): 88-93.

^x Shahjahanabad, the magnificent seventh city of Delhi was planned by the fifth Mughal emperor Shahjahan as his capital in the year 1639. The city, now in a dilapidated and transformed state, was known for its impressive buildings, gardens, bazaar and chowk. It is also commonly called as Old Delhi and MPD1962 has mentioned it as Old City. These terms are interchangeably used in this write-up.

^{xi} (D.D.A. 2015)

^{xii} (Khan, Nisar 2015)

^{xiii} (D.D.A. 2015)

- xiii (D.D.A.; D.D.A. 1962; pp 5, 6, 23)
xiv (D.D.A.; D.D.A. 1962; pp 6, 23, 27)
xv (D.D.A.; D.D.A. 1962; pp 23, 27, 40)
xvi (D.D.A.; D.D.A. 1962; pp 8, 12)
xvii (D.D.A.; D.D.A. 1962; pp 64)
xviii (D.D.A.; D.D.A. 1962; pp 70)
xix Dilli Gate, Turkman Gate, Ajmeri gate and Kashmiri Gate are existing while Lahori Gate, Kabuli Gate and Mori Gate were demolished by the British after 1857. The fortification wall is now present eastwards from Dilli Gate and follows the North direction till Kashmiri Gate, then turning towards Mori Gate. The fortification wall between Mori Gate and Dilli Gate was demolished to construct a peripheral road after 1857.
xx (G.O.I. 1957)
xxi (D.D.A.; D.D.A. 2015; pp viii)
xxii (D.D.A. 2015; 10.1, 10.2, 10.3, 10.4, 10.5)
xxiii (D.D.A.; D.D.A. 2015; 3.3.1.2.A, 3.3.2, 4.2.2.2.A)
xxiv <http://architexturez.net/pst/az-cf-26671-1132063734>
xxv <http://www.rajrewal.in/projects/exhibition-hall-nations.htm>
xxvi <http://www.thehindu.com/news/cities/Delhi/delhis-hall-of-nations-demolished/article18199298.ece>
xxvii (Anupam Bansal, Malini Kochupillai 2014)
xxviii (G.N.C.T.D. 2004) Article 2 (a)

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Legal and administrative issues related to the management of protected monuments of ASI, Bhopal circle “with special reference to an overview of Illicit Trafficking of Antiquities”

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About:

Dr. Izhar Hashmi is an Assistant Archaeologist currently working for the Archaeological Survey of India (ASI), Bhopal Circle. In addition to this he has been performing as site manager of the centrally protected monuments of sub circle, Kangra and Chamba in Himachal Pradesh as site manager of sub circle offices, to assist the Superintendent Archaeologist.

Abstract

This paper touch upon the various issues and common threats to cultural properties in India, and the methods and actions taken to prevent them in order to protect our valuable cultural heritage.

Keywords

Archaeology, Heritage byelaws, Legislation

1.0 Introduction:

The Archaeological Survey of India (ASI), under the Ministry of Culture, is the central agency for archaeological researches and protection of cultural heritage in India. Maintenance of ancient monuments and archaeological sites and remains of national importance is another prime concern of the ASI. Besides, it regulates all archaeological activities in the country as per the provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and the rules formulated under it. It also regulates Antiquities and Art Treasure Act, 1972. Archaeological Survey of India is an agency which represents central government (Government of India) and has regional office in each state. Every state Government has its own Department of Archaeology for the preservation of monuments which is important from the perspective of regional history / archaeology.

The Archaeological Survey of India and State departments of Archaeology are basically responsible for conservation, preservation and maintenance of the monuments and sites of archaeological importance. These agencies along with the local administration ensure the sanctity and security of the archaeological remains. Centre, State and District administrations also have their own legislations.

The common threats to the cultural properties in specified region include industrialization, upswing of construction activities, and rapid growth of population, theft, and implementation of legal provisions.

Industrialization changed the mindset of common people, which not only harmed our moral values but also impaired our culture. Expansion of railways, telecommunications, road widening, rapidly developing trade and commerce, awareness towards modern lifestyle, changing social values being taught through Televisions and Radios, craze of discos and pubs have brought immense change in the thinking of a simple common man. Due to modernization, life is full of glamour and is very fascinating. There are magnificent multi storied buildings, broad roads, shopping malls, multiplexes, electric light, and mills, factories and industries too. Due to increase of population the construction activities had intensified. Kuccha houses are being converted into pucca houses for which large quantities of cement concrete and fired bricks are being used. New factories are being set up due to increase in demand of such materials. These industries are being set up in the rural areas or outskirts of the major cities as there is no such space inside the cities. The villages are also adversely influenced with the waves of modernization.

This wave of modernization is adversely affecting the precious cultural heritage of our country due to modern constructions within the close proximity of monuments. Nobody cares about the laws, which prohibit and restrict such activities. This is disturbing the environment of our precious heritage. There are a number of sites, which are facing serious disturbance due to the modernization. A number of monuments, in Kundalpur, District Damoh, Amarkantak, District Anuppur, Bhimbetka and Sanchi, District Raisen, Gwalior, Khajuraho and District Chhatarpur are bearing the burden of new constructions on their shoulders. The disturbances created by the mankind are destroying this heritage.

The second threat towards the heritage is theft of antiquities from the archaeological sites. Madhya Pradesh is a very sensitive state in this regard. Religious activities are also very prominent threat we are facing in present scenario. Most of the time the monuments are defaced and the sites suffer due to our traditional practices like lime wash, electrification, use of flowers, vermilion, coconut, lighting of lamps etc. The mob gather during fair, school trips (below 10 years) and the like, not only harm the monument, but also spoil its surroundings. For protecting the cultural heritage we must ensure certain preventive and defensive measures including security of the monument, creating cultural awareness, Centre – State – District Administrative attentiveness, strict implementation of legislation, provision of Interpretation centres, tourist amenities & facilities and implementation of visitor's friendly policies.

2.0 Coordination between Stakeholders and local administration:

Archaeological Survey of India does not have a demolition squad. The entire power to remove encroachment and unauthorized construction is in the hand of district administration. District administration has failed to remove encroachment and unauthorized construction due to political & public pressure, their hectic work schedule etc. So Coordination between Stakeholders and local administration is essential. There is regular interaction with the other stakeholders. The local communities are also invited for various programmes and activities at the site for their participation.

3.0 Creating cultural awareness:

The Archaeological Survey of India, observes World Heritage Day (18 April) and World Heritage Week (19th - 25th November), and many more calendar events to spread the message of cultural awareness and the need to preserve the heritage for posterity. These special days offer an opportunity to raise the public awareness about the diversity of cultural heritage and the efforts that are required to protect and conserve it, as well as draw attention to its vulnerability. It also aims to educate the public to participate with ASI to protect and preserve the heritage for posterity and to future generations.

3.1 Publicity: Publicity is the one of the medium to create awareness of our own treasure. Article regarding the monuments, issues, work methodology, conservation and preservation carried out by the department, the norms and punishments by the legislation is regularly highlighted in local and national newspapers. Cultural notice boards and Protection Notice Boards are always displayed at regular intervals in the vicinity (up to 300 metres) of the monuments. Schools, NCC, NSC, are always approached to create cultural awareness. It is said that "if a women is educated whole family is educated" attempts are also made to involved women in the awareness drive.

3.2 Legislation: The existing legislative system is largely based on the acts introduced during the colonial period in India. Since then, modification in the existing acts and introduction of new laws to counter present-day challenges is an ongoing process. Still more efforts are required to create public awareness regarding the Antiquarian Laws as well as rigorous implementation of the existing system.

3.3 Heritage by-laws: Each archaeological site is of different nature and different limitation. The Forts of Rajasthan and the Kos Minar (Mile Stone) having same rules / laws, their prohibited and protected limit is similar i.e. 100mts, 200 meters. In the eye of the present law each site is similar in nature, so its create complications. Now ASI is planning to introduce site specific heritage by-laws as per the Provision of AMASR Act 2010. ⁱ

3.4 Theft: Many important actions have been taken for the prevention of theft. Most of the monuments have been fenced by dwarf wall and M.S.grill. A round the clock deployment of watch and ward with GPS device have been arranged. Special vigil during the night hours, deployment of gun men at important sites, Co-ordination with the local police and Installation of electronic surveillance are the other important measures taken to prevent Theft activities. The administration has always highlighted the duties of stakeholders towards the Cultural Heritage through public awareness, publicity etc.

4.0 Do's& Don'ts

4.1 Do's

- Help in keeping the monument clean.
- Help in maintaining the natural environment around the Monument.
- Help in preventing and avoiding any kind of destruction of a Monument by anyone and report any such matter to the concerned staff.
- Keep distance while looking at any displayed or easily reachable antiquities, painting etc.
- Help in protecting unprotected monuments, antiquities etc.
- Help in creating cultural awareness among the masses.
- Help maintaining the sanctity of the monuments.

4.2 Don'ts

- Do not litter or spoil any monuments.
- Do not pluck flowers etc., from monument gardens.
- Do not paint, draw, or whitewash any walls etc. around and of the monument.
- Do not touch nor expose to moisture any painting and avoid use of flash lights and ritual objects over them.
- Do not hamper or spoil the originality of any artefacts/antiquities of any significant heritage monument.
- Do not underestimate the importance of any cultural heritage

5.0 Conclusion

The legal measures mentioned alone are not effective to protect the cultural heritage, equally important is the active participation of various stakeholders ensuring preventive and defensive mechanisms towards protection of cultural heritage.

End notes:

ⁱ The Ancient Monuments and Archaeological Sites and Remains Act 1958 (Act no 24 of 1958), updated as per the Ancient monuments and archaeological sites and remains (Amendment and Validation) bill, 2010.

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School of Planning and Architecture, Bhopal

School of Planning and Architecture, Bhopal is established by Government of India as an Institute of National importance in the year 2008. This school is committed to produce best Architects and Planners of the Nation to take up the challenges of physical and socio-environmental development of global standards. This will be developed as 'University of imagination', where a sense of enquiry will prevail amongst all stake holders- students, researchers, professors and society at large. School of Planning and Architecture will strive for social sustenance through universal design, cultural sustenance through conservation and environmental sustenance through the discipline of Architecture, Planning and Design.

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In continuation to the mandate of the institute, SPA Bhopal proposes to start the "Centre for Cultural Knowledge Systems". Knowledge system approach is a method developed towards understanding the existing heritage in the paradigm of people, place and time leading to holistic understanding and identifying the heritage of the place. This leads to stimulation and encouragement for developing rigorous and innovative methodologies towards intellectual inquiry and building a framework towards the conservation scenario of India. This shall work as 'Center for Excellence' in SPA Bhopal.



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