

## LEGAL REGIME FOR THE PROTECTION OF CULTURAL HERITAGE IN INDIA

### 1. Introduction

India has one of the oldest civilizations in the world.<sup>1</sup> As a result, there are innumerable historical objects, monuments, and traditions in India that are of immense importance in today's age. However, the legal system that India follows is largely sourced from English law, i.e. that of its colonizers. Protection of cultural heritage in India was not at the top of the list for the British, but their contribution to establishing a legal regime for the same is unparalleled. Even though India became a republic in 1950, and the Constitution of India became the *Grundnorm*, the law for the protection of heritage is still either colonial or based upon the same concepts that promoted protection and conservation, rather than development. This article will trace the history and development of the law relating to heritage in India, discuss its enforcement, and suggest what changes can be made to improve the legal regime in this respect.

### 2. Constituent Assembly Debates

#### 2.1. Conserve or develop

The Constitution of India is the longest in the world. The Members of the Constituent Assembly were indirectly elected by the members of the Provincial Assembly and came from the length and breadth of India. On the point of protection of culture, the Constituent Assembly debated whether the word "conserve" is appropriate. Khushal Talaksi Shah, who was a noted economist, lawyer, and socialist, suggested that the word "develop" is more appropriate. He said, "I look upon culture of mankind, and the culture of every section of mankind, as not merely a static phenomenon but as a progressive and developing fact. To my mind, therefore, even more important than conserving it at some stage to which it has risen, is the need

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ORCID: 0000-0003-3831-506X

<sup>1</sup> Encyclopaedia Britannica, 'India – History' (*Britannica*) <https://www.britannica.com/place/India/History> (accessed: 20.09.2022).

to develop it.”<sup>2</sup> He also said that, be it the sciences, philosophy, or the arts, all are changing in nature and are a part of the culture. Therefore, culture should be “regarded as being capable of constant growth as any living organism,”<sup>3</sup> and “side by side with the right to conserve there must also be the right to develop the culture of any community.”<sup>4</sup> However, this idea did not gain traction, and the Constitution uses the word “conserve”.

## 2.2. Rights to minorities

Regarding the idea of minorities having special rights, Damodar Swarup Seth voiced his opinion that a religious minority should not be recognized in a secular state as this negates secularism, and would be disastrous for national unity.<sup>5</sup> Mihir Lal Chattopadhyay highlighted the concerns of the minorities as regards the protection of languages. He said that minorities live under the fear that the majority will be unsympathetic toward them, and therefore minorities should be guaranteed certain cultural rights.<sup>6</sup> Kasturiranga Santhanam suggested his unique idea of a linguistic commission that could be formed by Parliament to look after linguistic minorities. Ozhalur Viswanatha Alagesan highlighted that it was very important to conserve scripts and languages as various provincial scripts were “being threatened with extinction”<sup>7</sup> and added that he would not accept “Devanagri Chauvinism” (Devanagri is the script used for the Hindi language).

Overall, the debate in the Constituent Assembly was more on the issue of languages and special rights to minorities, rather than the protection of monuments or other culturally important sites.

## 3. Constitution of India

### 3.1. Law-making powers between the center and states

The original copies of the Constitution were handwritten and each page was decorated by artists of repute. Aesthetics aside, the Constitution established India as a federal republic, with a slight bias towards the Center. The Constitution demarcated the law-making powers between the Center and States through three lists, i.e. Union, State, and Concurrent. The legislature which has jurisdiction over a subject area that relates to cultural heritage is evident from table 1.

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<sup>2</sup> Constituent Assembly Debates, *Article 23*, 8 December 1948, <http://164.100.47.194/lok-sabha/writereaddata/cadebatefiles/C08121948.html> (accessed: 15.09.2022).

<sup>3</sup> *Ibidem*.

<sup>4</sup> *Ibidem*.

<sup>5</sup> *Ibidem*, *Article 23-Amendment 704*.

<sup>6</sup> *Ibidem*, *Article 23*.

<sup>7</sup> *Ibidem*.

Table 1. Competence of legislatures regarding heritage

List Name	Entry Number	Description of Entry	Competent Legislature
Union List	41	Trade and commerce with foreign countries; import and export across customs frontiers; definition of customs frontiers	Parliament
	62	The institutions known at the commencement of this Constitution as the National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and the Indian War Memorial, and any other like institution financed by the Government of India wholly or in part and declared by Parliament by law to be an institution of national importance	
	67	Ancient and historical monuments and records, and archaeological sites and remains, [declared by or under law made by Parliament] to be of national importance	
	68	The Survey of India, the Geological, Botanical, Zoological and Anthropological Surveys of India; Meteorological organisations	
State List	12	Libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records other than those [declared by or under law made by Parliament] to be of national importance	State Legislature
Concurrent List	17A	Forests	Parliament/ State Legislature
	17B	Protection of wild animals and birds	
	28	Charities and charitable institutions, charitable and religious endowments and religious institutions	
	39	Newspapers, books and printing presses	
	40	Archaeological sites and remains other than those [declared by or under law made by Parliament] to be of national importance	

Source: Own elaboration based on the Constitution of India.

### 3.2. Fundamental rights

Chapter III of the Constitution of India is unique as it guarantees certain fundamental rights. Anybody whose fundamental rights are being violated can go to a court and seek redress. These rights have been called the heart and soul of the Constitution, and art. 29 grants protection to those having “distinct language, script or culture” by giving them a right to “conserve the same.”

### 3.3. Directive principles of state policy

Directive Principles of State Policy (DPSP), are the guiding principles for drafting State policies (Chapter IV, Constitution of India). Article 49 of the Constitution, which is a DPSP, states, “Protection of monuments and places and objects of national importance. It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, [declared by or under law made by Parliament] to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.” Similarly, art. 48A was added to the Constitution through an amendment in 1976, wherein “Protection and improvement of environment and safeguarding of forests and wild life” was made a part of the DPSP.

### 3.4. Fundamental duties

Unlike fundamental rights, these are non-justiciable, and a citizen cannot be punished for not following fundamental duties. The article on fundamental duties has two duties that pertain to culture and heritage, i.e., every citizen of India has a duty:

- (f) to value and preserve the rich heritage of our composite culture;
- (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures (art. 51, Constitution of India).

### 3.5. Official language

Lastly, the emotive issue of language is also addressed in the Constitution, with part XVII of the Constitution dedicated to Official Language. The Constitution in art. 343 prescribes the official language of the Union to be Hindi in Devanagari script, but for fifteen years after the introduction of the Constitution, English might be used. States have the freedom to choose their official language (art. 345). However, the language used in the Supreme Courts and the High Courts, and in all the laws that are enacted is English (art. 348). Despite these exhaustive provisions, the question of language remains an emotive issue, especially in southern states.

## 4. Statutory laws

### 4.1. Historical background

The statutory regime for the protection of culture and heritage is older than the Constitution of India and was established by the British. As a result of the savings clause present in the Constitution, colonial laws continued to exist in independent

India and are still enforced (art. 13(3)(b)). The first archaeological work in India was undertaken by Sir William Jones, who started his work in 1784. It was only after the mutiny of 1857 that the Crown established direct rule over India. Under the British Raj, Alexander Cunningham was appointed the first Archaeological Surveyor and he “surveyed areas stretching from Gaya in the east to Indus in the north-west, and from Kalsi in the north to Narmada in the south, between 1861 and 1865. For this, he largely followed the footsteps of the Chinese pilgrim Hiuen Tsang.”<sup>8</sup> However, the Archaeological Survey was put to an abrupt end.

The first statute “to prevent injury to, and preserve the buildings remarkable for their antiquity and historical or architectural value”<sup>9</sup> was passed in 1863. Then the Treasure Trove Act, 1878, was passed and it remains in operation to the present day. Subsequently, the Ancient Monuments Preservation Act, 1904 (AMPA) was passed. The first law in independent India relating to the protection of heritage was the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 (AHMASRA), whose sole aim was to declare certain monuments and sites to be of national importance. Thereafter, the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (AMASR Act) was enacted, and after that Antiquities and Art Treasures Act, 1972, was passed by the Parliament. The provisions of these statutes form a complex web, as all of them are no longer applicable today. Also, there have been several amendments that have tried to keep these statutes in sync with our times.

## 4.2. Present-day legal protection

### 4.2.1. Treasure Trove Act, 1878

Although this legislation was one of the first to be enacted for the protection of treasure, the Preamble of the legislation states that it is to amend the law regarding treasure trove. Therefore, there must have been certain prior laws regarding treasure, but most likely these were not codified, as no such act is mentioned in the Act of 1878. This Act defines treasure as “anything of any value hidden in the soil, or in anything affixed thereto,” (Section 3) and any person who finds treasure worth ten or more rupees has to inform the Collector (Section 4). Although the sum of ten rupees must have been a great deal of money in 1878, in 2022, it is equivalent to 13 cents, and all it can buy is a very small candy. Surprisingly, the threshold of ten rupees has remained unchanged for over 200 years.

The Collector, who is now called a District Magistrate, is a government official and is considered to be the overall in charge of administration in a district. A finder has to not only give notice about the finding of treasure, but also has to “either

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<sup>8</sup> *Archaeological Survey of India v. Narender Anand*, 2012 SCC OnLine SC 56.

<sup>9</sup> *Ibidem*.

deposit the treasure in the nearest Government treasury, or give the Collector such security as the Collector thinks fit, to produce the treasure at such time and place as he may from time to time require.” (Section 4) Any person not doing the same, apart from losing their possible share in the treasure, can also be “punished with imprisonment for a term which may extend to one year, or with fine, or with both.” (Section 20)

Upon being given notice, the Collector has to follow certain procedures to ascertain the true owner of the treasure. If no person comes forward to claim the treasure, the same is handed over to the finder. (Section 11) Even if somebody comes forth and establishes their claim to the treasure, the finder gets a part of it. (Section 12) Nevertheless, the Government at all times has the power to acquire the treasure but has to pay the value of the treasure to its original owners. (Section 16) Although this two hundred years old law may seem archaic, it continues to be enforced today.<sup>10</sup>

#### 4.2.2. Ancient Monuments and Archaeological Sites and Remains Act, 1958

When the Ancient Monuments and Archaeological Sites and Remains Act (hereinafter: The AMASR Act) was in the process of being enacted, there were mainly two statutes that were already in force regarding the protection of heritage, i.e. the AMPA and the AHMASRA. The AMPA applied to all the monuments in India as it was passed before the Constitution of India. Accordingly, the 1958 law pertained to only subjects mentioned in “Entry 67 of List 1 and to archaeological sites and remains falling under Entry 40 in the Concurrent List.”<sup>11</sup> With the enactment of the AMASR Act, the AMPA was no longer enforced. Secondly, as the AHMASRA merely referred to monuments, that feature was subsumed into the AMASR Act and the AHMASRA was repealed.

At present, the AMASR Act is the mainstay regarding the protection of heritage in India. It is largely based on the Act of 1904<sup>12</sup> but differs in certain crucial aspects. For example, some powers of the Collector are now with the Director-General of Archaeology; Central Government can compulsorily direct the owner of a monument to maintain the same; Central Government can regulate excavation of archaeological sites which are not declared to be of national importance; and Central Government can compulsorily purchase “antiquities and other objects of historical or archaeological importance on payment of compensation.”<sup>13</sup>

The three most crucial definitions that are given in the AMASR Act are “ancient monument,” (Section 2(a)), “antiquity,” (Section 2(b)), and “archaeological site and

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<sup>10</sup> *Zabeer Ahmad Farooqi v. State of UP and Ors.* 2020 SCC OnLine All 1300.

<sup>11</sup> Statement of Object and Reasons, the AMASR Act.

<sup>12</sup> I. Sengupta, *Preservation between Empire, Nation and Nationalisms: The Problem of History and Heritage in India*, “Nations and Nationalism” 2018, vol. 24, issue 1, p. 116.

<sup>13</sup> Statements of Object and Reasons, the AMASR Act.

remains.” (Section 2(d)) All of them should have been in existence for at least one hundred years.

### *Monuments*

The Act empowers the Director General to “purchase, or take a lease of, or accept a gift or bequest of, any protected monument” with the prior sanction of the Central Government. (Section 5(1), the AMASR Act) When a monument is without an owner, the Director General can “assume the guardianship of the monument.” (Section 5(1), the AMASR Act) However, in the event that the monument has a religious use, that use will continue, even though the Government might have become the new owner or a guardian. The Government also has the right to enter into an agreement with the owner of a protected monument for its preservation. This agreement not only relates to the maintenance of the monument but also restricts the rights of the owner. These agreements are binding on the owner. (Section 6, the AMASR Act) If an owner fails to enter into an agreement with the Government, the Government can do everything that was to be mentioned in the agreement through a separate order, which is binding on the owner. (Section 9, the AMASR Act) Importantly, “if the Central Government apprehends that a protected monument is in danger of being destroyed, injured, misused, or allowed to fall into decay,” it may acquire the protected monument, as if the maintenance of the protected monument were a public purpose. (Section 13, the AMASR Act)

There is a regulated area of two hundred meters in all directions around a monument of national importance, and building activities are restricted in such regulated areas. Lastly, the authorities have the power to frame bye-laws for each protected monument, but these have to be framed in consultation with the Indian National Trust for Arts and Cultural Heritage (INTACH) or any other expert body that is recognized by the Central Government. (Section 20-E, the AMASR Act)

### *Archaeological Excavations*

Excavations in a protected area can be carried out by an archaeological officer or a person holding a licence, but only after notifying the Collector and the owner of the protected area. (Section 21, the AMASR Act) Any antiquity found has to be reported to the Central Government, which has the power to compulsorily acquire such antiquities. (Section 23, the AMASR Act) Any person who suffers a loss due to excavation is compensated by the Central Government. (Section 27, the AMASR Act)

### *Antiquities*

The Government has the power to restrict the movement of a certain class of antiquities. If the Government believes that a certain antiquity “is in danger of being destroyed, removed, injured, misused or allowed to fall into decay or is of opinion that, by reason of its historical or archaeological importance, it is desirable to preserve

such antiquity in a public place,” (Section 26, the AMASR Act) it can compulsorily acquire the same. However, this power to acquire does not pertain to an “image or symbol actually used for bona fide religious observances.” (Section 26(3), the AMASR Act)

### *Penalties*

Offences concerning monuments and antiquities, such as destruction, defacement, or moving, prescribe imprisonment which may extend to two years or a “fine which may extend to one lakh rupees, or with both.” (Section 30, the AMASR Act) In the case of antiquity, the Court can “direct such person to restore the antiquity to the place from which it was moved”. (Section 30(2), the AMASR Act) Any person who does construction in a prohibited or regulated area can be punished with imprisonment which may extend to two years, or a “fine which may extend to one lakh rupees, or with both.” There are certain offences which are cognizable (Section 32, the AMASR Act), i.e. the police has the power to take cognizance on its own and can make an arrest without a warrant.

#### 4.2.3. Antiquities and Art Treasures Act, 1972

The Antiquities and Art Treasures Act, 1972 (hereinafter: the AAT Act) was necessitated as the Antiquities (Export Control) Act, 1947, the existing law at the time, was found to be insufficient. The definition of antiquities under the Act is similar to that given in AMASR Act, but also includes “any manuscript, record or other document which is of scientific historical, literary or aesthetic value and which has been in existence for not less than seventy-five years.” (Section 2(1)(a)(II), the AAT Act) In addition, the Act defines “art treasure” as “any human work of art, not being an antiquity, declared by the Central Government by notification in the Official Gazette, to be an art treasure.” (Section 2(b), the AAT Act) However, art cannot be recognized as an art treasure if its author is alive. As per the Act, only Central Government and its authorities are empowered to export antiquities and art treasures out of India, which export, too, is strictly regulated. Violation of this provision attracts penalties in the Customs Act, 1962 as well as “imprisonment for a term which shall not be less than six months but which may extend to three years and with fine.” (Section 25, the AAT Act)

Any person desirous of dealing in antiquities has to first obtain a licence from the Central Government. Every person having a licence has to maintain “records, photographs and registers” of antiquities, which can be inspected by the Government. The Government also has the power to mandate the registration of certain antiquities, and the transfer of such antiquities has to be communicated to appropriate authorities by persons dealing in antiquities. Lastly, the Government also has the power to compulsorily acquire an antiquity.

#### 4.2.4. Other statutes

Apart from the abovementioned statutes that are considered to be the legal backbone of the preservation of cultural heritage in India, there are a few other pieces of legislation that also tangentially deal with the protection of heritage. The Marine Aids to Navigation Act, 2021, empowers the Government to designate a lighthouse as a heritage lighthouse. (Section 23) Similarly, the Biodiversity Act, 2002, authorizes State Governments to declare “areas of biodiversity importance as biodiversity heritage sites,” (Section 37) for which additional rules and schemes can also be framed.

There also exist dozens of statutes enacted by different States that contain several provisions dealing with the protection of heritage. These are in the form of municipal corporation acts, specialized heritage protection acts, and individual enactments for each particular monument or heritage site. Because of their numbers and extent, it is beyond the scope of this article to delve into the same.

### 5. Delegated legislation

In pursuance to the Statutes, the Central Government and State Governments have made several rules and regulations. This type of legislation is not made by the Legislature, but by the Government, and hence is called delegated legislation. Any delegated legislation has to remain with the vires of its Statute, and cannot expand its scope. Their legislative scrutiny takes place, when they are tabled before the Legislature. For example, the Ancient Monuments and Archaeological Sites and Remains Rules, 1959, were framed under the AMASR Act. These Rules lay down the intricacies of the AMASR Act, such as setting opening hours of the monuments, the entrance fee to be levied, the prohibition of certain acts like cooking, hawking, begging, etc. The detailed procedure for obtaining permission for excavation is also laid out in the Rules, and the procedure to obtain permission to do filming is also given in the Rules themselves.

Apart from Rules, some policies lay out the vision and action plan of the Government. Policy for Archaeological Survey of India Photographers to work within Centrally Protected Monuments details the condition of the licence that is given to a person to act as a photographer. A similar policy exists for tourist guides, which is called the Policy for Archaeological Survey of India Guides to perform within Centrally Protected Monuments. Both these policies have been made by the Archaeological Survey of India, which is the “premier organization for archaeological researches, protection, conservation, preservation and maintenance of ancient monuments and archaeological sites & remains of national importance, regulating archaeological activities in the country, conducting exploration and excavation, development and maintenance of museums, epigraphical researches and publication, implementing” the AMASR and Antiquities and Art Treasures Act, 1972.

Apart from the above, the Ministry of Culture runs a scheme called the Safeguarding the Intangible Cultural Heritage and Diverse Cultural Traditions of India. The Scheme has been running since 2013 with the objective of “reinvigorating and revitalizing various institutions, groups, individuals, identified non-MoC institutions, non-government organisations, researchers and scholars so that they may engage in activities/projects for strengthening, protecting, preserving and promoting the rich intangible cultural heritage of India.”<sup>14</sup>

## 6. Enforcement

The enforcement of laws for the protection of heritage can be divided into three areas: 1) Protection of Monuments and Sites, 2) Retrieval of stolen antiquities from foreign countries, 3) Security of antiquities in India

### 6.1. Protection of Monuments and Archaeological Sites

Although the law provides for punishment for defacement and destruction of monuments and sites, the penalty is meagre and hardly ever imposed. At most sites, tourists can see defaced monuments, with names of lovers scribbled all over them. Another issue is cleanliness. The situation is very different at world heritage sites that draw most attention, and have enough staff. However, it is the less visited, but no less important sites that are often neglected, both by people and by officialdom.

The Archaeological Survey of India (ASI) administers 3,693 protected monuments and sites. The Government launched a “National Mission on Monuments and Antiquities (NMMA) in 2007 to prepare national registers on monuments and antiquities.” Data of over 180 thousand built heritage and sites has been collected. To secure these, the Central Government uses “regular employees, CISF [Central Industrial Security Force], private security guards, etc.” and the States Governments also secure the sites coming under their jurisdiction. Despite this, “24 monuments/sites are untraceable.”<sup>15</sup> Therefore, there needs to be public awareness and participation to secure the sites and the feeling should not be that the site is owned by the Government, but rather by the community.

### 6.2. Retrieval of stolen antiquities from foreign countries

The Central Government has done exceptional work in this regard. Through diplomacy, and also following the legal processes for restitution, a total of “229 antiquities

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<sup>14</sup> Answer to Unstarred Question No. 185, answered on 4 February 2020, Rajya Sabha.

<sup>15</sup> Answer to Unstarred Question No. 3641, answered on 8 August 2022, Lok Sabha

have been retrieved from other countries since 2014.”<sup>16</sup> Moreover, the Government has instructed all its Missions abroad “to be in active touch with the Government there so as to look out for any artifact of Indian origin that can be brought back to India.”<sup>17</sup>

### 6.3. Security of antiquities in India

The National Mission on Monuments and Antiquities (NMMA) has data of over 1.6 million antiquities.<sup>18</sup> Despite being provided security, “14 number of antiquities have been reported stolen from centrally protected monuments from 2015 to 2021.”<sup>19</sup> At the same time, officials of ASI work with Customs officials to “prevent smuggling of antiquities and also to verify antiquities brought for export.”<sup>20</sup>

### 6.4. Judicial Pronouncements

The lack of protection of heritage on the part of the Executive has resulted in many cases that have come before the courts. During the dark days of the Emergency in India, a widespread anti-Hindi agitation emerged in the state of Tamil Nadu. The political party which came to power in Tamil Nadu honored the people who had participated in anti-Hindi protests with pensions from the State. However, the Supreme Court was quick to disallow such a move, and said, “In our opinion the pension scheme formulated by the Tamil Nadu Government contains the vice of disintegration and fomenting fissiparous tendencies. If any State will be engaged in exciting emotion against Hindi or any other language such provocation has to be nipped in the bud because these are anti-national and anti-democratic tendencies.”<sup>21</sup> Chief Justice A.N. Ray, in a separate case, also upheld a Presidential Order which had directed the promotion of use of Hindi amongst Railway employees.<sup>22</sup>

In some cases, the Supreme Court has adjudicated the dispute between the jurisdiction of the Center and State authorities<sup>23</sup> and also passed directions for the protection of certain monuments.<sup>24</sup> In the case of *Marthanda Varma v. T.P. Sundara*

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<sup>16</sup> Answer to Starred Question No. 102, answered on 25 July 2022, Lok Sabha.

<sup>17</sup> Answer to Unstarred Question No. 4013, answered on 7 April 2022, Rajya Sabha.

<sup>18</sup> Answer to Starred Question No. 102, Lok Sabha.

<sup>19</sup> Answer to Unstarred Question No. 1249, answered on 6 December 2021, Lok Sabha.

<sup>20</sup> Answer to Unstarred Question No. 4056, answered on 28 March 2022, Lok Sabha.

<sup>21</sup> R.R. *Dalavai v. State of T.N.*, (1976) 3 SCC 748.

<sup>22</sup> *Union of India v. Murasoli Maran*, (1977) 2 SCC 416.

<sup>23</sup> *Archaeological Survey of India v. State of M.P.*, 2014 SCC OnLine SC 1042.

<sup>24</sup> *Archaeological Survey of India v. Narender Anand* 2012 SCC OnLine SC 56, *K. Guruprasad Rao v. State of Karnataka* 2011 SCC OnLine SC 360, and *Wasim Ahmed Saeed v. Union of India* 2010 SCC OnLine SC 619.

Rajan,<sup>25</sup> the Supreme Court found for “Digital Archiving of Temple Antiques.” In *Subhas Dutta v. Union of India*, the Court also passed directions for the safeguarding of antiquities.

Lastly, the Supreme Court has been cognizant of pollution as having an impact on monuments. In *M.C. Mehta v. Union of India*,<sup>26</sup> the Supreme Court directed the shifting of polluting industries from Agra, which were discoloring the Taj Mahal. In *Friends of Victoria Memorial v. Howrah Ganatantrik Nagarik Samity*,<sup>27</sup> the Court upheld the order banning parking near the Victoria Memorial in Kolkata to prevent damage to the building due to vehicular pollution.

## 7. Suggestions and conclusions

The issue of protecting heritage has to be addressed on multiple fronts. India’s forest cover is declining. To protect this natural heritage, more awareness needs to be created among the public,<sup>28</sup> and a legal audit should be done to see if the laws framed are effective. There exists no specific statute for the protection of intangible cultural heritage, which is a very important way of attracting tourists and highlighting diversity in India. It will also help in preserving that cultural heritage.<sup>29</sup> Indian scientists have also been putting forward a demand of having a law to preserve fossils and geological sites,<sup>30</sup> and the same should be seriously considered.

Experts have criticized the provisions of the Antiquities and Art Treasures Act, 1972.<sup>31</sup> ASI has a huge role in the protection of monuments and sites. However, it mainly consists of bureaucrats who are not experts in the area of heritage protection. The threshold of a monument or site being at least one hundred years old is also complex, as certain modern heritage then does not come within its ambit.<sup>32</sup> On the practical side, cost overruns are common in restoration projects.<sup>33</sup> The

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<sup>25</sup> 2011 SCC OnLine SC 1294.

<sup>26</sup> (1997) 2 SCC 353.

<sup>27</sup> 2011 SCC OnLine SC 1246.

<sup>28</sup> S. Sharma, R. Kumar, *Sacred Groves of India: Repositories of a Rich Heritage and Tools for Biodiversity Conservation*, “Journal of Forestry Research” 2021, vol. 32, issue 3, p. 899.

<sup>29</sup> L. Lixinski, *Heritage Listing as a Tool for Advocacy: The Possibilities for Dissent, Contestation, and Emancipation in International Law Through International Cultural Heritage Law*, “Asian Journal of International Law” 2015, vol. 5, p. 387.

<sup>30</sup> P. Pulla, *India’s Geologists Champion Law to Protect Fossil Treasures*, 572 “Nature” 2019, vol. 163.

<sup>31</sup> C. Shroff, R. Shroff, *India’s Antiquities Laws: An Antiquated Relic?*, 21 “Trusts & Trustees” 2015, p. 75.

<sup>32</sup> Pushpinder Kaur, *Legal Regime for the Protection of Heritage Stone Monuments in India: A Study with Special Reference to Taj Mahal and Lotus Temple*, “Geoheritage” 2022, vol. 14, no. 87, p. 9.

<sup>33</sup> D. Roy, S.N. Kalidindi, *Critical Challenges in Management of Heritage Conservation Projects in India*, “Journal of Cultural Heritage Management and Sustainable Development” 2017, vol. 7, p. 291.

Comptroller and Auditor General has also highlighted the poor safety mechanisms at important sites.<sup>34</sup> At the same time, the involvement of expert bodies like INTACH is a welcome step and should be promoted. Universities should consider having courses that result in a workforce that is better suited to promote cultural heritage.

Tourism was recognized as an important economic sector in 1982.<sup>35</sup> India now aims to become a world leader in tourism by 2047.<sup>36</sup> In March 2021, Bhaskaracharya National Institute for Space Application and Geo-Informatics (BISAG-N) was assigned “to develop a user friendly mobile application ‘Indian Heritage’ containing information on all Centrally Protected Monuments/Sites.”<sup>37</sup> It is through methods like these, which involve the public and harness technology that important features of India’s five thousand-year-old civilisation can be preserved.

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<sup>36</sup> N.K. Thakur, *Dharamshala Declaration Affirms to Make India Global Leader in Tourism Sector by 2047*, “Hindustan Times”, 21.09.2022, <https://www.hindustantimes.com/cities/chandigarh-news/dharamshala-declaration-affirms-to-make-india-global-leader-in-tourism-sector-by-2047-101663701872348.html> (accessed: 21.09.2022).

<sup>37</sup> Answer to Unstarred Question No. 1289, answered on 28 July 2022, Rajya Sabha.

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## STRESZCZENIE

### REŻIM PRAWNY OCHRONY DZIEDZICTWA KULTURY W INDIACH

Uprawnienia do stanowienia praw dotyczących ochrony dziedzictwa kultury w Indiach są podzielone między parlament i stanowe ciała ustawodawcze na mocy Konstytucji Indii. Choć Indie mają wiele obiektów historycznych, pomników i tradycji kulturowych, twórcy Konstytucji Indii położyli większy nacisk na ochronę mniejszości, ich praw kulturowych i języków. W rezultacie istnieją pewne prawa podstawowe, które gwarantują ochronę osobom mającym „odmienny język, pismo lub kulturę”, dając im prawo do ich zachowania. Istnieją również podstawowe obowiązki, zgodnie z którymi każdy obywatel musi m.in. dbać o bogate dziedzictwo kultury Indii i chronić je. Archeologiczny aspekt indyjskiego dziedzictwa kultury wywodzi się od Brytyjczyków. Pierwsze prawa dotyczące ochrony dziedzictwa były kolonialne, a niektóre z nich nadal obowiązują. Prawa ustanowione w niepodległych Indiach również zawierają te same podstawy. Jeśli chodzi o egzekwowanie przepisów, Indie dobrze sobie radzą, odzyskując swoje zabytki, które zostały skradzione i przemycone za granicę. Niemniej jednak mniej popularne elementy dziedzictwa kultury nadal cierpią z powodu opieszałości zarówno wykonawczej, jak i publicznej. Sądy w Indiach aktywnie chronią zabytki. Jednocześnie potrzebna jest większa świadomość społeczeństwa, a także pewne zmiany w polityce, ponieważ Indie chcą zostać światowym liderem w turystyce do 2047 r.