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LEGAL FRAMEWORK ON HERITAGE PROTECTION IN INDIA

1. Introduction

Heritage shows the essence of the past that has been influenced by cultural, social, and political factors, demonstrated through events and spaces. The collective cultural inheritance of a community allows it to preserve its history and identity by conserving the built environment and representative and valued landscapes. This article discusses the legal framework that governs heritage protection and highlights the critical role of the central government in preservation. The Ancient Monuments Preservation Act of 1904 and the Ancient and Historical Monuments and Archaeological Sites and Remains Act of 1958 are the primary laws safeguarding heritage in India. The Treasure Trove Act of 1874 was later revised as the Antiquities and Art Treasures Act of 1972, which regulates movable heritage such as museum collections, artefacts, and manuscripts. Preserving heritage is essential, as it allows future generations to understand and appreciate their cultural roots and helps build a sense of pride and identity.

The article is divided into four parts. The first part deals with the statutory framework of built heritage, the second part focusses on the statutory protection of antiquities and art treasures, and the third part addresses the national framework on Intangible Cultural Heritage.

2. Statutory framework of built heritage

The Archaeological Survey of India (ASI) was established in 1861 during the British colonial era to document and make an inventory of India's ancient architecture. This was the first step towards creating a protection mechanism. Its creation was

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supported by James Fergusson, and Sir Alexander Cunningham became its First Director General.¹ Although Cunningham intended to document ancient structures, he excavated and removed several of them from their original site and took them to British museums.² Nevertheless, the surveys conducted under his supervision uncovered many ancient sites spread over a vast area.

Additionally, the Treasure Trove Act of 1878 authorised collectors to acquire treasures on behalf of the Government. Consequently, any property so acquired is deemed to be owned by the Government. The Collector is required to pay the treasure's value to the treasure's owner.³ Architectural and archaeological heritage were not formally distinguished, and their conservation was initially integrated. Later, heritage conservation developed as a separate discipline with growing consensus and awareness after independence.

British writer Samuel Johnson corresponded with Governor General Warren Hastings in 1774 about formally surveying the remains of ancient towers and ruined cities.⁴ Some decades later, in 1861, Cunningham wrote to Lord Canning, urging measures to preserve ancient Indian monuments. The goal was to introduce a Western scholarly understanding of Indian culture to civilise the country. As a result, the Asiatic Society was founded in Calcutta to study Indian arts, architecture, history, language, and literature with the help of European scholars. Though England had a decentralised process in the domain of heritage conservation, the British did not, as colonisers, encourage a similar approach in India.⁵

Two regulations were introduced in Bengal and Madras provinces during the rule of the East India Company. These regulations granted the government the power to penalise individuals for damaging public buildings. They were called Bengal Regulation XIX of 1810 and Madras Regulation VII of 1817, respectively. However, both regulations were later repealed by Act XX of 1863.⁶ The new legislation authorised the Government to safeguard and maintain structures recognised for their historic and architectural significance.

¹ See the historical backdrop of ASI at <https://asi.nic.in/HQ/history-view> (accessed: 2.04.2024).

² I. Sengupta, "Monument preservation and the vexing question of religious structures in colonial India" [in:] *From Plunder to Preservation. Britain and the Heritage of Empire: C.1800–1940*, eds. A. Swenson, P. Mandle, Oxford University Press, Oxford 2013, pp. 171–186; see also: I. Sengupta, "Culture-keeping as state action: Bureaucrats, administrators, and monuments in colonial India", *Past & Present* 2015, vol. 226 (suppl 10), pp. 153–177.

³ A. Mann, "The Endangered Inheritance: Conservation through Legislation", *Indian Historical Review* 2020, vol. 47, issue 1, <https://journals.sagepub.com/doi/full/10.1177/0376983620922408> (accessed: 20.04.2024).

⁴ F.R. Allchin, G. Erdosy, *The archaeology of early historic South Asia: the emergence of cities and states*, Cambridge University Press, Cambridge 1995.

⁵ F.R. Allchin, "Monument Conservation and Policy in India", *Journal of the Royal Society of Arts* 1978, vol. 126, issue 5268, pp. 746–765.

⁶ F.R. Allchin, G. Erdosy, *The archaeology of early historic...*

Incidentally, Governor General Dalhousie founded the Public Works Department in 1855 to construct government buildings, roads, railway communications, and postal networks. In the European Quarter, the Department introduced street axes, building regulations, and traffic rules.⁷ Mughal edifices and *havelis* were refurbished to welcome international corporations' reinvestment. The technical staff built neo-gothic buildings, museums, libraries, and public squares.⁸

In the late 1930s, Improvement Trusts were created by legislation to zone the new colonial capital and build community housing, sanitary cordons, and chawls.⁹

After that, in 1904, the Ancient Monuments Preservation Act was enacted to preserve ancient monuments, exercise control over the trafficking of antiquities, and protect and acquire ancient monuments.¹⁰ It differentiates between ancient monuments that are protected and those that are not protected. After inviting and receiving objections, the central government declares a monument protected under the Act. The Central Government, the Collector, the Commissioner and the private owners of buildings or monuments were the recognised stakeholders in the Act. It formalised the earlier intention of acquiring antiquities and architectural heritage.

The Act gave the British Indian state the power to acquire physical custody of listed monuments, giving the Archaeological Department control. This went against the Anti-Scrape Movement in Britain and resulted in monuments being turned into tourist destinations. Even Hindu temples and Islamic mosques were transformed into European-style gardens.

The 1904 Act did not repeal the Bengal Charitable Endowments, Public Buildings and Escheats Regulation, 1810, and the Religious Endowments Act, 1863.¹¹ Therefore, conflicts between Public Works and temple/mosque committees were resolved by hiring Indian staff in the Archaeological Department. Negotiations with *shebaitis*, temple managers, and donors allowed for the coexistence of archaeologists and priests.¹²

⁷ M. Desai, M. Desai, *The Bungalow in Twentieth-Century India: The Cultural Expression of Changing ways of life and aspirations in the domestic architecture of colonial and post-colonial society*, Routledge, London – New York 2016.

⁸ S. Banerjee *et al.*, “Asansol: Unfinished biography of a Raj Era railway town: Explorations in heritage practice in post-India” [in:] *Geographies of Post-Industrial Place, Memory, and Heritage*, eds. M.A. Rhodes (II), W.R. Price, A. Walker, Routledge, London – New York 2020, pp. 37–51.

⁹ D.E. Haynes, N. Rao, “Beyond the colonial city: Re-evaluating the urban history of India, ca. 1920–1970”, *South Asia: Journal of South Asian Studies* 2013, vol. 36, no. 3, pp. 317–335.

¹⁰ See the preamble to the Ancient Monuments Preservation Act, 1904 <https://www.india-code.nic.in/handle/123456789/2339?> (accessed: 3.04.2024).

¹¹ D. Sutton, “Devotion, Antiquity, and Colonial Custody of the Hindu Temple in British India”, *Modern Asian Studies* 2013, vol. 47, no. 1, pp. 135–166.

¹² D. Sutton, “Inhabited pasts: monuments, authority, and people in Delhi, 1912–1970s”, *The Journal of Asian Studies* 2018, vol. 77, no. 4, pp. 1013–1035.

The 1951, the Ancient and Historical Monuments and Archaeological Sites and Remains Act declared the listed and graded monuments of national importance under the 1904 Act. It added 450 resources from the princely states of Rajasthan, Gujarat, Hyderabad, and Mysore and empowered new states to create their heritage laws for regionally essential monuments.¹³

After independence, the Constitution of India incorporated the provisions of art. 49¹⁴ and art. 51(f)¹⁵ of the Indian Constitution to protect cultural heritage. The right to conserve, protect, and manage cultural heritage is not included in the Fundamental Rights of the Indian Constitution; instead, it is accorded a non-enforceable status. Apart from that, Entry 67 of List I of the Seventh Schedule¹⁶ endorses the jurisdiction of the Ancient and Historical Monuments and records of archaeological sites and remains of national importance, and Entry 12 of List II¹⁷ incorporates the protection of Libraries, Museums, and similar institutions controlled and financed by the State, including historical monuments and records explicitly excluded from List I. Entry 40 of List III¹⁸ incorporates archaeological sites and remains that are not on List I. After the 74th Amendment to the Constitution, Municipal Corporations are empowered to participate in conserving urban heritage.

Subsequently, the 1958 Act repealed the 1951 Act. The Ancient Monuments and Archaeological Sites and Remains Act (AMASR) of 1958 preserves ancient and historical monuments, archaeological sites, and remains of national significance.¹⁹ The Act regulates excavations and protects sculptures and carvings. Ancient monuments are classified as national, state, corporate, or under private ownership.²⁰ The Act defines reconstruction, repair, and renovation aspects. Regulated areas are defined for the conservation of sites.²¹ The Central Government, the Archaeological Survey

¹³ G.K. Rao, "Legislation on Conservation of Ancient Monuments and Archaeological Sites and Ruins: A Critical Appraisal", *Journal of the Indian Law Institute* 1980, vol. 22, no. 1, pp. 108–133.

¹⁴ Part IV (Directive Principles of State Policy) of the Indian Constitution.

¹⁵ Part IV-A (Fundamental Duties) of the Indian Constitution.

¹⁶ It is a part of the Union List. Parliament and the Central Government are the sole authority to legislate and execute such matters.

¹⁷ It is a part of the State List. The State Legislature and Government have the sole authority to legislate on such matters.

¹⁸ It is part of the Concurrent List. By virtue of the quasi-federal nature of legislative and executive relations, Parliament and the Central Government are the sole authorities to legislate and execute on such matters.

¹⁹ See the preamble of the 1958 Act, https://www.indiaculture.nic.in/sites/default/files/acts_rules/TheAncientMonumentsandArchaeologicalSitesandRemainsAct1958_12.03.2018.pdf (accessed: 2.04.2024).

²⁰ D.L. Stein, "To curate in the field: archaeological privatisation and the aesthetic 'legislation' of antiquity in India", *Contemporary South Asia* 2011, vol. 19, no. 1, pp. 25–47.

²¹ N. Thakur, "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" [in:] *Shared Global Experiences: For Protection of Built Heritage*, ed. V. Kawathekar,

of India, and the National Monuments Authority are the executive organs of the Act. Additionally, the 1959 rules allow public-private partnerships to manage graded and listed properties.

The National Commission for Heritage Sites Bill 2009 aimed to incorporate UNESCO World Heritage Convention principles.²² The Commission recommended policies for managing heritage sites by creating a roster. However, this Bill never came into force. Later, the AMASR Act of 2010 was amended in 2017, introducing regulations for buffer zones around monuments, including prohibited and regulated zones for mining and other development activities. Moreover, the 2014 National Policy for Conservation of Ancient Monuments²³ focuses on creating a management framework that uses public-private partnerships to sustain limited resources in conserving heritage buildings. Furthermore, it encourages local community participation in preserving heritage and regenerating traditional knowledge. The policy details conservation techniques and mitigation strategies for threats and risks, which ASI and NMA will adopt through impact assessment initiatives and collaboration with central and state agencies. The Indian Heritage Cities Network, established in 2006, collaborates with the Ministry of Urban Development, the Government of India, and UNESCO. It aims to establish Heritage Cells within local authorities to safeguard and use heritage resources for sustainable development. It provides policy advice, capacity building, exchange of good practices, awareness raising, technical assistance, and facilitates partnerships.²⁴

2.1. Institutions involved in heritage protection

The ASI is responsible for safeguarding India's ancient monuments and archaeological sites of national importance. It operates under the Ministry of Culture, Government of India, through 24 Circles at the State Level. It is also the custodian of India's World Heritage Sites and protects around 5,000 monuments, while the State Department of Archaeology protects an additional 4,000 monuments.²⁵

SPA Press, Bhopal, p. 87, <https://iclaifi.icomos.org/wp-content/uploads/2020/12/India-2015.pdf> (accessed: 3.04.2024).

²² K. Sanyal, "The National Commission for Heritage Sites Bill," *Journal of Indian Law and Society* 2009, vol. 1, p. 167.

²³ The National Conservation Policy available at: https://cag.gov.in/uploads/download_audit_report/2022/Chapter%203-062f0de369640f7.65867174.pdf (accessed: 3.04.2024); <https://pib.gov.in/newsite/PrintRelease.aspx?relid=108032> (accessed: 3.04.2024).

²⁴ See the detailed programme of the Indian Heritage Cities Network: <http://ihcn.in/about-ihcn/> (accessed: 3.04.2024); see also: Support for the creation of the Indian Heritage Cities Network (IHCN), <https://whc.unesco.org/en/indian-cities/> (accessed: 3.04.2024).

²⁵ See the role of the Central Government in protecting monuments at: <https://asi.nic.in/monuments/> (accessed: 5.04.2024).

The Central Government is responsible for protecting monuments. It declares a monument of national importance, organises public exhibitions of inscriptions and classifications, and identifies prohibited or regulated areas within the protected monument's perimeter. It specifies how a detailed site plan for each protected monument must be prepared and incorporated into the heritage byelaws. Likewise, the Central Government can acquire a protected monument for public purposes if it shows signs of decay, destruction, defacement, and misuse. The Collector will take custody of the monument, and the owner's rights will be restricted. The owner cannot charge for access to the monument and must facilitate unrestricted access to the public and Archaeological Officers. The owner will also pay for necessary expenses related to the maintenance of the monument.

The Director General of the Department of Archaeology can lease, accept, or inherit a protected monument, take ownership of an ownerless or a privately owned monument, and negotiate with the owner for an agreed-upon amount. The Director General can grant or deny permission for construction within the prohibited area after assessing its impact on the monument's preservation, safety, and security. The Department can excavate inside protected areas containing ruins, relics, and antiquities.

Another executive organ, the National Monuments Authority, advises the Central Government on grading and classifying protected monuments. It also conducts heritage impact assessments of large-scale public development projects in the regulated area.²⁶

The Indian Trust for Architectural and Cultural Heritage (INTACH) is a non-governmental organisation that advises the Central Government on built heritage. It was established in 1984 with financial grants from the UK's Charles Wallace Fund and the Indian Government.²⁷ The organisation aims to identify unprotected built heritage and list undocumented historic buildings and sites.²⁸ It has over 31 chapters nationwide and resources of 1 crore rupees. After the Bhuj earthquake, INTACH assessed the damage to historic buildings, conducted surveys, and developed plans to restore and rehabilitate damaged buildings. INTACH helps conserve, restore, renovate, and develop unregulated heritage properties. The organisation streamlines projects suggested by local chapters and forwards them to public or private organisations for financial assistance. It also works with experts to improve the

²⁶ See the role and functions of the National Monuments Authority at: https://www.nma.gov.in/show_content.php?lang=1&level=1&cls_id=50&lid=44&nma_type=0 (accessed: 5.04.2024).

²⁷ N. Piplani, "Training, Research and Capacity Building: INTACH Heritage Academy", *Context* 2015, vol. 11, p. 137.

²⁸ D. Gupta, "The role of Indian National Trust for Art and Cultural Heritage in heritage conservation in India" [in:] *Heritage Conservation in Postcolonial India*, eds. M. Chalana, A. Krishna, Routledge, London – New York 2020, pp. 41–51; see also: B.K. Thapar, "Reflections: On the Role of INTACH in India's Conservation Movement", *Architecture+ Design*, Nov.–Dec. 1989.

conservation paradigm. INTACH received UN ECOSOC consultative status in 2007. It advises the Indian government on policy and implementation and receives a corpus fund of 100 crores. The INTACH UK Trust was dissolved, and its funds were transferred to INTACH.²⁹

The 2004 INTACH Charter aims to conserve architectural heritage sites in India.³⁰ The Charter combines ideas from the Venice and Burra charters, emphasising the value of indigenous traditions and local craftsmen in conserving living heritage. It also incorporates Shilpa Shastra and suggests creating a Register of Craftspeople to promote local crafts and traditional livelihoods.³¹

2.2. Cultural heritage protection by the states

Apart from the national Acts, the states have also enacted their Ancient Monuments, Archaeological Sites, and Remains Preservation Acts under the aegis of their respective state governments, aiming to preserve the monuments declared of State importance under List II of the Constitution.

In these cases, the owner or the occupier usually agrees with the state government under comparable terms and conditions. The Delhi Ancient and Historical Monuments and Archaeological Sites and Remains Act, 2004,³² provided for the eviction of unauthorised occupants and modified the compensation principles in the event of losses incurred during authorised excavation or entry into the site. A Delhi Archaeological Advisory Council has been constituted to guide policy implementation, similar to advisory boards in Gujarat and Maharashtra. Also, the Gujarat Act and the Delhi Act provide for preserving reasonable amenities inside the protected monument in the controlled area.

After Independence, states enacted Town and Country Planning Acts, which empowered Development Authorities to draft plans for transportation, utilities, housing, and historic properties.³³ They collaborate with the Advisory Council and the Town and Country Planning Board and enact building bylaws. They also enforce building restrictions for Heritage Buildings before the Heritage Boards or Heritage Commissions implement them.³⁴

²⁹ A.G.K. Menon, “Heritage conservation and urban development: Beyond the monument” [in:] *Heritage Conservation and Urban Development*, ed. R. Tandon, INTACH, New Delhi 2005, pp. 1–7.

³⁰ See the functions of INTACH at: <http://intach.org/about-charter.php> (accessed: 5.04.2024).

³¹ See: ICOMOS Burra Charter and the 1994 Nara Document on Authenticity.

³² See the provisions of the 2004 Act at https://prsindia.org/files/bills_acts/acts_states/delhi/2005/2005Delhi9.pdf (accessed: 2.04.2024).

³³ K. Banerjee, S. Mal, *Role of Urban Development Authorities in Local Governance*, Insta Publishing, New Delhi 2022, pp. 13, 21–23.

³⁴ E.F.N. Ribeiro, “The Existing and Emerging Framework for Heritage Conservation in India: The Legal, Managerial and Training Aspects”, *Third World Planning Review* 1990, vol. 12, no. 4,

The Municipal Corporations hold significant authority in heritage conservation, established under the Municipal Corporation Acts of respective districts.³⁵ The Municipal and Development Authorities form the district executive authority responsible for implementing development schemes. Some Municipal Corporations have a Heritage Conservation Committee, but functional overlaps and discretionary lapses have arisen since the establishment of the Heritage Commissions.³⁶ The Development Authority, Municipal Corporation, and Heritage Commission coordinate with state archaeological departments to ensure meticulous Transferable Development Rights implementation to reap the benefits of the protection mechanism and conservation interface.³⁷ Usually, Grade I and Grade II heritage properties get tax concessions and exemptions, provided there are no modifications to the physical fabric of the heritage property. Tax exemptions do not apply for commercial heritage buildings or institutional or residential heritage buildings with commercial activities. The state government bears the cost of building repairs if the owner/occupier agrees with them.

Indian states have enacted statutes to conserve their cultural heritage sites. The Arunachal Pradesh Heritage Act of 2015 established a Heritage Authority that regulates the conservation, protection, and management of heritage sites. The Jammu and Kashmir Heritage Conservation and Preservation Act of 2010 established the Heritage Conservation and Preservation Authority, while the Telangana Heritage (Protection, Preservation, Conservation, and Maintenance) Act of 2017 established the Telangana State Heritage Authority and various committees. Finally, the Punjab Ancient, Historical Monuments, Archaeological Sites, and Cultural Heritage Maintenance Board Act of 2013 introduced a cultural cess, which is collected from Public-Private Partnerships in Development Projects and is divested into the Cultural Heritage Maintenance and Development Fund to maintain heritage buildings valued more than 50 crores.³⁸

Various organisations have contributed to community building and heritage restoration. The Horniman Circle Association helped construct a Banking District in Mumbai; CRUTA raised 50 lakhs for heritage protection in Ahmedabad; the Friends

p. 338; see also: R.P. Singh, R.S. Singh, "Urban heritage in India: Towards Orientation to planning" [in:] *Strategies in Development Planning*, eds. A.K. Singh, V.K. Rai, A.P. Mishra, Deep & Deep Publications, New Delhi 1997, pp. 289–304.

³⁵ R.P. Singh, R.S. Singh, "Urban heritage in India..."

³⁶ See the Policy of Urban Heritage Conservation by NITI Aayog: Working Group Report on Improving Heritage Management in India, <https://www.niti.gov.in/sites/default/files/2020-06/Improving-HeritageManagement-in-India.pdf> (accessed: 2.04.2024).

³⁷ R.P. Singh, R.S. Singh, "Urban heritage in India..."

³⁸ See the functions of the state heritage commissions: The Punjab Ancient, Historical Monuments, Archaeological Sites and Cultural Heritage Maintenance Board Act, Act 29 of 2013, https://prsindia.org/files/bills_acts/acts_states/punjab/2013/2013PB29.pdf (accessed: 2.04.2024).

of Pondicherry Heritage provided professional expertise and financial assistance for the restoration of settlements in Pondicherry; and the Aga Khan Trust for Culture, along with the Dorabji Tata Trust, restored Luytens' Delhi. DRONAH restored Jaipur's urban façade, illuminations, and other physical infrastructure.³⁹

2.3. Judicial decisions

The Supreme Court's protection framework dichotomy can be traced through various decisions. In the Central Vista project,⁴⁰ the court allowed the construction of a new Parliament building despite compromising the integrity of heritage structures. However, in the Mahakal Temple⁴¹ and Taj Trapezium Case,⁴² the court proactively removed encroachments and imposed an embargo on granting clearances to heavy industries near the Taj Corridor. The court also mandated more accountability and democracy in the clearance process. The Supreme Court ordered removing unlawful construction and occupation in the Fort Tughlaqabad area,⁴³ a protected monument of national importance.

3. Antiquities and art treasures

The Antiquities and Art Treasures Act of 1972 (hereafter: the 1972 Act), along the lines of the 1970 UNESCO Convention, significantly clarified the definition of an antiquity, particularly concerning antiquities and art treasures, crystallising the provisions laid down in the 1904 Ancient Monuments Preservation Act.⁴⁴ Previously, it was defined as a moveable object of historical or archaeological association, but the 1972 Act introduced categories of antiquities and art treasures. The Act is to be read along with the Customs Act of 1962 and the Export and Import Control Act of 1947, which addresses concerns about exporting prohibited items.⁴⁵ The Central Government regulates the export and registration of antiquities and art

³⁹ K. Bose, "Incentivizing Urban Conservation in Kolkata: The Role of Participation, Economics and Regulation in Planning for Historic Neighbourhoods in Indian Cities", 27.01.2014, p. 24, <https://www.semanticscholar.org/paper/Incentivizing-Urban-Conservation-In-Kolkata%3A-The-Of-Bose/54f4c9ae812f458472598fb89e70f521eeefb21dc> (accessed: 18.05.2024).

⁴⁰ *Rajeev Suri vs Union of India* SC 2021.

⁴¹ *Sarika vs. Administrator, Mahakaleshwar Mandir Committee*, Ujjain MP SC 2020.

⁴² *M.C. Mehta vs. Union of India (UOI) and Ors* SC 2019.

⁴³ *S.N. Bhardwaj vs. Archaeological Survey of India and Ors* SC 2016.

⁴⁴ See the 1972 Act: https://www.indiaculture.gov.in/sites/default/files/acts_rules/TheAntiquitiesandArtTreasuresAct1972_12.03.2018.pdf (accessed: 23.04.2024).

⁴⁵ V.K. Gupta, "Retrieval of Indian Antiquities: Issues and Challenges", *Art Antiquity & Law* 2019, vol. 24, p. 101.

treasures.⁴⁶ It appoints authorities to issue licenses and acts as a custodian for those kept in government-managed institutions.⁴⁷ It can acquire antiquities compulsorily and appoint an arbitrator to resolve disputes. The Director General of the Archaeological Survey of India determines what is an antiquity or an art treasure. However, with the advent of cyberspace and the illegal sale of antiquities over the Internet, the 1972 Act ought to incorporate harmonious provisions enumerated in the Information Technology Act of 2000.⁴⁸

ASI issues temporary permits for the exhibition of antiquities outside India for up to six months. Long-term loans are permitted for up to three years and are extendable for two years. ASI inspects returned antiquities and issues a 'No Objection Certificate.' Suspected antiquities are referred to the ASI Director General for confirmation. However, there is no mechanism to differentiate between legal and illegal imports.⁴⁹

4. Intangible cultural heritage

Though the earliest notion of built heritage developed as the architectural manifestations of religion, the sub-textual connotation of traditions and cultures brought intangible infusions into the cultural landscapes. It was also reinforced in the collective perception of Janapada,⁵⁰ where memory, information and imagination harmoniously coexist, weaving a holistic metaphysical connotation through the various lyrical and literary aspects of religious texts. Those ancient routes were dotted with traditional practices and rituals of ancient doctrines, preservation of ancient religious manuals, and associative memory, trickling down to knowledge, pride, and identity. Cultural Heritage protection covers the conservation of intangible values from spiritual belief systems to aesthetic principles. Defining this as

⁴⁶ S.S. Biswas, "Protection of cultural property vis-à-vis Indian antiquarian legislation and global concern" [in:] *Estrategias relativas al patrimonio cultural mundial. La salvaguarda en un mundo globalizado. Principios, prácticas y perspectivas. 13th ICOMOS General Assembly and Scientific Symposium. Actas, Comité Nacional Español del ICOMOS*, Madrid 2002, pp. 1–4, <https://openarchive.icomos.org/id/eprint/541/> (accessed: 27.04.2024).

⁴⁷ S.K. Pachauri, "Plunder of cultural and art treasures—the Indian experience" [in:] *Illicit Antiquities. The Theft of Culture and the Extinction of Archaeology*, eds. N. Brodie, K. Walker Tubb, Routledge, London – New York 2003, pp. 280–291.

⁴⁸ See: D. Pal, "Illicit trafficking of antiquities", *Chanakya National Law University Journal* 2018–2019, vol. 8, <https://cnlu.ac.in/storage/2022/08/Volume-8-2019.pdf> (accessed: 27.04.2024).

⁴⁹ V.K. Gupta, "Retrieval of Indian Antiquities...", p. 101.

⁵⁰ R.P. Singh, "Appraising the Indian cultural landscape: Envisioning ecological cosmology in the 21st Century", *North Eastern Geographer* 2017, vol. 39, no. 1–2, pp. 3–28.

cultural heritage was challenging until the NARA Document on Authenticity and the ICOMOS Burra Charter.⁵¹

Bharatvarsha was defined as a part of the mesocosm where communities (a part of the microcosm) communicate with space: Viswabhramanda (the macrocosm) woven into a common thread of sacred sites from Varanasi to Prayagraj, from Chitrakoot to Kailash, blended into locations of symbolic coupling of the mesocosm and microcosm, and immortalised through myths, practices, pilgrimages and traditions.⁵² We also witness this blend in Sabarmati⁵³ and Shantiniketan. While Shantiniketan envisioned intangible literary formalisms through folklore and graphic art instead of urban functionalism, the Sabarmati Ashram combined swadeshi and Sarvodaya ideals with radical elements of socialist architecture and sentimental aestheticism.⁵⁴

The indigenous traditions of India suggest cyclical renovations and minimal intervention in historic buildings, unlike Eurocentric practices. Binumol Tom highlights the significance of Vaastu Shashtra and Jirnodharana in this regard.⁵⁵

The Sangeet Natak Akademi coordinates India's nominations for cultural heritage lists and maintains the National Inventory of Intangible Cultural Heritage.⁵⁶ Founded in 1952, it preserves and promotes performing arts, including classical dance, music, theatre, puppetry, crafts, and folk arts. It is an autonomous body with acclaimed cultural and artistic personalities serving on its General Council.

The Akademi collaborates with Indian governments and art academies, provides grants for performing arts research, maintains a reference library, advises the Indian government on cultural heritage policies, and lists 46 elements (15 inscribed) in the national inventory of India's Intangible Cultural Heritage.

⁵¹ R.A. Engelhardt, P.R. Rogers, *Hoi An protocols for best conservation practice in Asia. Professional Guidelines for Assuring and Preserving the Authenticity of Heritage Sites in the Context of the Cultures of Asia*, UNESCO, Bangkok 2009, pp. 25–38.

⁵² R.P. Singh, "Appraising the Indian cultural landscape...", pp. 3–28.

⁵³ B.T. Diyora, *History of Education and Gandbi: A Case Study of Ashram System in Gujarat*, Doctoral dissertation, Maharaja Sayajirao University of Baroda, India, 2021.

⁵⁴ N.P. Ahuja, "Creating the Sensibility of the Modern Indian Artist-Craftsman: Santiniketan & the Arts and Crafts Movement" [in:] *idem, The Making of a Modern Indian Artist-Craftsman Devi Prasad*, Routledge, New Delhi 2012, pp. 10–63.

⁵⁵ T. Binumol, *Traditional Conservation of timber architecture*, INTACH UK Trust, New Delhi 2007.

⁵⁶ See: Intangible Cultural Heritage of India, <https://www.sangeetnatak.gov.in/sections/ICH> (accessed: 16.04.2024).

5. Conclusions

Heritage conservation, a process that goes back centuries, has recently been recognised as a valuable cultural resource. While cultural resources have always held economic, cultural, or societal value, there have been conscious efforts in the past decades to value them objectively. However, sometimes, the intangible aspects of heritage are so fleeting that they go unnoticed; thus, their origin is lost. Therefore, traditional communities are crucial in preserving traditions and their intangible linkages.

Despite all efforts, legislation has not eliminated the imperial motive of compulsory acquisition of monuments and their custodianship. Lack of owner/stakeholder consent causes conflicts in heritage conservation. Domestic laws explore participatory paradigms but confirm the state's importance as a dominant stakeholder.

In conclusion, while the central government is the sole authority responsible for protecting antiquities and art treasures, the Sangeet Natak Akademi has documented and inventoried the events leading to conserving intangible cultural heritage. It has collated justifications and opinions from all community stakeholders who played a role in conservation, whether active or passive. This documentation helps to preserve the intangible cultural heritage that is often overlooked and can be lost if not given the attention it deserves. The intangible cultural heritage is a vital link to our past, and its preservation is crucial for future generations to understand and appreciate their cultural roots.

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SUMMARY

Debarati Pal

LEGAL FRAMEWORK ON HERITAGE PROTECTION IN INDIA

The article describes the national and municipal legislations on built and living heritage, antiquities and art treasures and explores the national framework for conserving Intangible Cultural Heritage in India. It maps the transcendence from the pre-independence Acts to the post-independence legislation and amendments. The roles and responsibilities of the stakeholders, including the community were examined.

The text serves as a comprehensive guide to the constitutional background of the Ancient Monuments and Archaeological Sites and Remains Act 1904, the Ancient Monuments and Archaeological Sites and Remains Act 1958, and the National Policy for Conservation of the Ancient Monuments, Archaeological Sites and Remains, 2014. The text also examines the roles and responsibilities of various bodies, such as State Heritage Boards, Heritage Development Authorities and Councils, in conserving ancient monuments, archaeological sites, and remains. It also highlights the functional interface of these bodies with the Municipal Development Authority and Municipal Corporation under the Town and Country Planning Acts, which play a crucial role in implementing these policies. Moreover, the text delves into the impact of the Supreme Court's judicial decisions on the legislative framework, providing a real-world context and making the text more engaging by illustrating how the law is applied in practice.

Alternatively, in the executive domain, the role of the Central Government, National Monuments Authority, Archaeological Survey of India (ASI) and Indian Trust for Architectural and Cultural Heritage (INTACH) is discussed to calibrate the notions of inclusivity and community participation. Under the tangible category, the movable heritage properties posited under the Antiquities and Art Treasures Act of 1972 are also examined.

In the realm of Intangible cultural heritage, the article explores the role of the Sangeet Natak Akademi in granting protection and inventorising the Intangible Cultural Heritage of India.

Keywords: heritage protection, India, judicial decision

STRESZCZENIE

Debarati Pal

RAMY PRAWNE OCHRONY DZIEDZICTWA W INDIACH

W artykule opisano krajowe i miejskie przepisy dotyczące dziedzictwa stworzonego przez człowieka i naturalnego, zabytków i skarbów sztuki oraz zbadano krajowe ramy ochrony niematerialnego dziedzictwa kultury w Indiach. Przedstawiono rozwój prawodawstwa, począwszy od ustaw sprzed uzyskania niepodległości do ustawodawstwa i poprawek wprowadzonych po uzyskaniu niepodległości. Przeanalizowano rolę i obowiązki interesariuszy, w tym społeczności.

Artykuł zawiera kompleksowe omówienie konstytucyjnego tła ustawy z 1904 r. o starożytnych zabytkach i stanowiskach archeologicznych oraz pozostałościach, ustawy z 1958 r. o starożytnych zabytkach i stanowiskach archeologicznych oraz ustawy z 2014 r. o krajowej polityce ochrony starożytnych zabytków, stanowisk archeologicznych i pozostałości. Poddano analizie również obowiązki różnych organów, takich jak Państwowe Rady Dziedzictwa, Organy Rozwoju Dziedzictwa i Rady, pod kątem ochrony starożytnych zabytków, stanowisk archeologicznych i pozostałości. Podkreślono przy tym funkcjonalną współpracę tych organów z Urzędem Rozwoju Miejskiego i Korporacją Miejską na mocy ustaw o planowaniu przestrzennym, które odgrywają kluczową rolę we wdrażaniu tych polityk. Ponadto zwrócono uwagę na wpływ orzecznictwa Sądu Najwyższego na ramy prawne, by zilustrować zastosowanie prawa w praktyce.

Alternatywnie, w domenie wykonawczej omówiono rolę rządu centralnego, National Monuments Authority, Archaeological Survey of India (ASI) oraz Indian Trust for Architectural and Cultural Heritage (INTACH) w celu zobrazowania pojęć inkluzywności i uczestnictwa społeczności. W ramach kategorii materialnej badane są również ruchome obiekty dziedzictwa kultury określone w ustawie z 1972 r. o zabytkach i skarbach sztuki.

W dziedzinie niematerialnego dziedzictwa kultury zbadano rolę Sangeet Natak Akademi w ochronie niematerialnego dziedzictwa kultury Indii.

Słowa kluczowe: ochrona dziedzictwa, Indie, orzecznictwo sądowe