

# HERITAGE MANAGEMENT: LAW & THE ROLE OF PUBLIC INTEREST LITIGATION

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A thing of beauty is a joy forever!  
Taj Mahal's shadow can even inspire!  
Let's seek not heritage belongs to which nation  
Let's strive to preserve it for every coming generation!

Cultural and natural heritage of outstanding universal value is the common heritage of humanity. The world community has risen above politics to participate in the protection of this heritage. International law and national laws have addressed the subject - heritage management by putting in place special legislations. Everyone's cultural right and right to quality environment are recognized by Human Rights law. Right to development as an inalienable human right includes cultural well being.<sup>1</sup> Preservation of heritage, however formidable it may appear, is an inevitable responsibility.

This paper is a modest attempt to present the law relating to the management of cultural heritage, to explore the role of public interest litigation (PIL) in such management in the Indian context and forward suggestions for reforms in Indian law. In this paper the word management is used to include the measures aimed at ensuring the viability, identification, documentation, research, preservation, protection, promotion, enhancement, transmission as well as revitalization of cultural heritage.<sup>2</sup>

## International Law

United Nations Educational, Scientific and Cultural Organization was established as a specialized agency of UNO in 1945. Article I (2) (c) of the **Constitution of UNESCO** entrusts to UNESCO the task of maintaining, increasing and diffusing knowledge by assuring the conservation and protection of the world's inheritance of books, works of art and monuments of history and science and recommending to the nations concerned the necessary international conventions. In 1972 under the auspices of UNESCO the international community of states have adopted the **Convention Concerning the Protection of World Cultural & Natural Heritage** (hereinafter WH Convention) establishing a system of collective protection on a permanent & scientific basis.

Article 1 defines **cultural heritage** and the following is considered as cultural heritage:

Monuments: architectural works, works of monumental sculpture & painting, elements or structures of an archeological nature, inscriptions, cave dwellings & combinations of features, which are of outstanding universal value from the point of view of history, art or science;

Groups of buildings: groups of separate or connected buildings which because of their architecture, their homogeneity or their place in the landscape, one of outstanding universal value from the point of view of history, arts or science;

Sites: works of man or the combined works of nature & man and areas including archaeological sites, which are of outstanding universal value from the historical aesthetic ethnological or anthropological point of view.

**International Protection** WH Convention recognizes that such heritage shall constitute a world heritage for whose protection it is the duty of the international community as a whole to co-operate. Nevertheless the convention fully respects the sovereignty of the states on whose territory the heritage is situated. Every state party shall undertake not to deliberately damage directly or indirectly the heritage situated in the territory of other states. International protection of world cultural & natural heritage shall mean establishment of a system of international co-operation & assistance designed to support state parties to the convention in their efforts to conserve & identify that heritage.<sup>3</sup>

**Duty of the territorial state-** Every state party shall identify & delineate the different heritage properties situated on its territory.<sup>4</sup> Every state shall, to the utmost of its own resources and with international assistance & cooperation where appropriate shall ensure the identification, protection conservation, presentation & transmission to future generations of the cultural & natural heritage situated on its territory. This duty shall be recognized as the duty primarily of the territorial state.<sup>5</sup> Towards this duty the state shall

(i) adopt a general policy which aims to give the cultural & natural heritage a function in the life of the community & to integrate the protection of that heritage into comprehensive planning programmes;

(ii) to set up within their territories where such services do not exist, one or more services for the protection, conservation and presentation of heritage with an appropriate staff & possessing the means to discharge their functions;

(iii) to develop scientific & technical studies & research & to work out such operating methods as will make the state capable of counteracting the dangers that threaten its heritage

(iv) to take the appropriate legal, scientific, technical administrative & financial measures necessary for the identification, protection, conservation, presentation & rehabilitation of this heritage; and

(v) to foster the establishment or development of national & regional centres for training in the protection, conservation & presentation of the cultural & natural heritage & to encourage scientific research in this field.<sup>6</sup>

**Education Programmes** State parties shall endeavor to strengthen appreciation & respect by their people of the cultural & natural heritage. They shall keep the public broadly informed of the dangers threatening their heritage and of the activities carried on under this Convention. They shall publicize the importance of the property for which they may have received WHC assistance.<sup>7</sup>

**Reports** - The state parties shall give information on the legislative & administrative provisions which they have adopted & other action for the application of this Convention along with the experience acquired in this filed in their reports to UNESCO.<sup>8</sup>

**World Heritage Committee** An inter government committee called the World Heritage Committee (WHC) is established by virtue of Article 8 within UNESCO for the protection of the cultural & natural heritage of outstanding universal value. WHC shall be composed of 15-21 state parties ensuring equitable representation of regions & cultures of the world. In an advisory capacity representative of International Center for the Study of the Preservation & Restoration of Cultural Property, International Council of Monuments & Sites, International Union for Conservation of Nature & Natural Resources & other inter governmental bodies or NGOS with similar objectives may attend the meetings of WHC. The state members shall choose as their representatives persons qualified in the field of the cultural or natural heritage.<sup>9</sup>

**World Heritage List** Every state party shall submit to WHC an inventory of property forming part of the cultural & natural heritage situated in its territory & suitable for inclusion in the list. Based on the inventories the WHC shall establish & keep up to date [at least every 2 years] & publish '*World Heritage List*'. Inclusion of any property in the

list requires the consent of the territorial state.' WHC shall also maintain '*List of World Heritage in Danger*'<sup>10</sup>

**World Heritage Fund** Established under Article 15, the fund shall constitute a trust fund whose resources shall come from compulsory & voluntary contribution, donations, fund raising events etc. WHC shall decide on the use of resources of the fund.

Requests for international assistance by state parties shall be satisfied from the Fund. Requests based upon disasters or natural calamities shall be given immediate priority consideration by WHC.

Assistance of WHC may be for the following: -

- studies concerning the artistic, scientific and technical problems raised by the protection, conservation, presentation and rehabilitation of the cultural and natural heritage;
- provisions of experts, technicians and skilled labor to ensure that the approved work is correctly carried out;
- training of staff and specialists at all levels in the field of identification, protection, conservation, presentation and rehabilitation of the cultural and natural heritage;
- supply of equipment which the State concerned does not possess or is not in a position to acquire;
- low-interest or interest-free loans which might be repayable on a long-term basis; the granting, in exceptional cases and for special reasons, of non-repayable subsidies.<sup>11</sup>

**Application & Disputes** - The convention governs only the state parties as all treaties do. The convention allows denunciation by state parties, by notification in writing to the Director General of UNESCO, which will take effect after 12 months after receipt of the denunciation instrument.<sup>12</sup>

The convention does not provide for settlement of disputes and responsibility for breach of the convention. These appear to be governed by customary international law or other conventions between & among the parties. There is a primary rule under UN Charter and customary international law that disputes shall be settled peacefully.<sup>13</sup> International Court of Justice provides for judicial settlement whereas the parties may also opt for arbitration, mediation, inquiry etc. If a treaty provision is broken, responsibility follows to make reparation.<sup>14</sup> Reparation must, so far as possible, wipe out the consequences of the

illegal act & re-establish the situation that would have existed had the illegality not occurred. Depending on the nature of the illegality & the seriousness of the consequences reparation may range in the form from apology, punishment of individuals responsible for the unlawful act & repeal of offensive legislation, to restitution in kind or the payment of monetary compensation.<sup>15</sup>

The other significant international conventions and recommendations adopted under the auspices of UNESCO are –

# **Convention for Protection of Cultural Property in the Event of Armed Conflict (1953)**

The coverage is for both moveable and immovable property of great importance to the cultural heritage of every people. There is a pledge to respect such property and protect by entering in the **International Register of Cultural Property under Special Protection**. The states have undertaken to ensure immunity of cultural property under special protection by refraining from any act of hostility directed against that property and any military use of such property or its surroundings.<sup>16</sup>

# Recommendation of International Principles Applicable to Archaeological Excavations (1956)

# Recommendation on the Most Effective Means of Rendering Museums to every one (1960)

# Convention on the Means of Prohibiting & Preventing the Illicit Import, Export & Transfer of Ownership of Cultural Property (1970)

# **Recommendation for the Protection of Moveable Cultural Property (1978)**

Moveable cultural property shall be taken to mean all moveable objects that are the expression and testimony of human creation or of the evolution of nature and which are of archaeological, historical, artistic, scientific or technical value or interest, including items in the following categories:

products of archaeological explorations and excavations conducted on land and water; antiquities, items of dismembered historical monuments, materials of anthropological and ethnological interest, items relating to history, items of artistic interest like paintings etc.,

manuscripts, publications, items of numismatic and philatelic interest; archives, furniture, dress, zoological, botanical and geological specimens.(I 1 a )

The recommendation is about risk prevention, risk coverage, education, information and international cooperation.

### **# UNESCO Convention on the Protection of the Under Water Cultural Heritage (2001)**

Under water cultural heritage means all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously, for at least 100 years such as sites, structures, buildings, artifacts and human remains, vessels, aircrafts, cargo together with their archaeological and natural context and objects of prehistoric character but not pipelines, cables or other installations. (Article 1)

### **# Convention for the Safeguarding of the Intangible Cultural Heritage (2003)**

The purpose is to safeguard intangible cultural heritage (ICH), to ensure respect of such heritage of communities, groups etc., to raise awareness and provide international cooperation and assistance. (Article 1) ICH means the practices, representations, expressions, knowledge, skills as well as the instruments, objects, artifacts and cultural spaces associated therewith which the communities or groups consider as part of their cultural heritage and transmit and recreate from generation to generation subject to their compatibility with human rights. ICH is manifested in oral traditions, performing arts, social practices, rituals and craftsmanship.(Article 2)

UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation is also established. UNESCO Cultural Heritage Laws Database is established on its Cultural Sector Website.

**UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage (2003)** has been adopted. The declaration recognizes the importance of the protection of cultural heritage against intentional destruction and requires the states to take all appropriate legislative, administrative and other measures in this respect. States are

required to ensure respect for cultural heritage in society particularly through educational, awareness raising and information programmes.

#### Principle VI – State responsibility

A state that intentionally destroys or intentionally fails to take appropriate measures to prohibit, prevent, stop, and punish any intentional destruction of cultural heritage of great importance for humanity, whether or not it is inscribed on a list maintained by UNESCO or another international organization, bears the responsibility for such destruction, to the extent provided for by international law.

#### Principle VII – Individual criminal responsibility

States should take all appropriate measures, in accordance with international law, to establish jurisdiction over, and provide effective criminal sanctions against, those persons who commit, or order to be committed, acts of intentional destruction of cultural heritage of great importance for humanity, whether or not it is inscribed on a list maintained by UNESCO or another international organization.

The declaration pledges international cooperation.

## **Indian Law**

India is a respectable member of the international society of states. Foreign affairs, UNO, participation in international conferences, associations and other bodies and implementing decisions made thereat, entering into agreements with foreign countries and implementing them, war and peace, extradition and other matters pertaining to international relations are subjects of the Union government.<sup>17</sup> Article 51 of Indian Constitution mandates the State to foster respect for international law and treaty obligations and promote international peace and security. India is a member of UNESCO and a signatory to major international conventions.

**Constitution of India:** The 'Pledge' lines- "*I love my country & I am proud of its rich & varied heritage... I pledge my devotion to my country...*" is reflected in our Constitution.

**State's Duty:** Constitution of India obliges 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.<sup>18</sup> Heritage management has been allotted to the union and

states while the constitution has divided the subjects between the center & states. Entry 67, list I (union) reads:

Ancient & historical monuments & records, and archaeological sites and remains, declared by or under law made by Parliament to be of national importance. State list Entry 12 - Ancient & historical monuments & records other than those declared by or under law made by Parliament to be of national importance, and Concurrent list, Entry 40 - Archeological sites & remains other than those declared by or under law made by Parliament to be of national importance.<sup>19</sup> Matters in the concurrent list are common to Union & states with precedence to union law in case of repugnancy.<sup>20</sup>

Citizen's Duty: Every Citizen is cast with a duty to value & preserve the rich heritage of our composite culture & safeguard public property.<sup>21</sup>

Archaeological Survey of India, established in 1870, is now under GOI, Ministry of Culture. Dedicated to the preservation and conservation of the archaeological antiquities of India, ASI is not established under any law. The National Archives of India (NAI) is a repository of the non-current records of GOI and is holding them in trust for the use of administrators & scholars. NAI set up in 1891 is under ministry of culture.

**Indian Treasure Trove Act 1878 (ITTA)** last amended in 1949 is staggeringly obsolete. "Treasure means anything of value hidden in the soil, or in anything affixed thereof" Whenever any treasure exceeding the value of ten rupees is found by any owner, the owner shall quickly give a notice to collector. Through the collector the civil dispute & mutual rights of claimants are settled under the Act. Collector may acquire the treasure on behalf of the government on payment of the value. Grounds for acquisition are not stated in the Act. It appears that ITTA is not aimed at cultural heritage preservation. The Antiquities (Export Control) Act, 1947 which provided for controlling the export of objects of antiquarian or historical interest or significance has been repealed & replaced by **The Antiquities and Art Treasures Act 1972 (AATA)**. It aims at 1) regulating the export trade in antiquities & art treasures 2) providing for the prevention of smuggling of and fraudulent dealings in antiquities 3) providing for the compulsory acquisition of antiquities and art treasures for preservation in public places AATA define antiquity to include coins, sculpture, painting, objects of ancient literature, religious, political or historical significance, articles declared so by central government. These should be at least 100 years old. Antiquities also include manuscript, record, document etc. of at least 75 years old.<sup>22</sup>



‘Art treasure’ is defined as human work of art not being an antiquity but being declared as art treasure by central govt. having regard to its artistic or aesthetic value. No such declaration can be made till the author is alive.<sup>23</sup>

**Export & trade** AATA seeks to regulate export & trade in antiquities & arts treasures. Section 3 lays that only Central Government or its agency shall export. Export by any other person shall be unlawful & punishable with minimum 6 months imprisonment which may extend to 3 years & fine.<sup>24</sup> Trade in antiquities and art treasures can be done only by license holders who shall maintain proper records. Central Government may by notification withdraw to itself exclusively the right to trade in antiquities & art treasures.<sup>25</sup>

**Registration of antiquities:** Central government may notify those antiquities, which shall be registered under this Act having regard to

- i. the necessity of conserving the objects of art
- ii. the need to preserve such objects within India for the better appreciation of the cultural heritage of India
- iii. Such other factors as will or are likely to contribute to the safeguarding of the cultural heritage of India.

Every person who owns, possesses or controls any antiquity notified shall register such antiquity with the registry officers under the Act.<sup>26</sup>

**Compulsory acquisition-** Central Government may compulsorily acquire antiquities & art treasures on payment of compensation if in its opinion it is desirable to preserve them in a public place.<sup>27</sup>

The central government has framed the AAT Rules, 1973 to administer AATA.

### **The Ancient Monuments & Archeological Sites & Remains Act, 1958 (AMASRA)**

The Ancient & Historical Monuments & Archeological Sites & Remains (Declaration of National Importance) Act, 1951 was repealed by AMASRA. The Ancient Monuments Preservation Act, 1904 does not apply to historical monuments and archeological sites & remains declared to be of national importance by AMASRA after the commencement of AMASRA.<sup>28</sup>

AMASRA enables the central government to declare ancient monuments etc. & lays down the procedure. Such monuments & areas are termed ‘protected’ and the Director General of Archaeology can assume guardianship. There is a provision for agreements between the owner & the central government for the maintenance of the monuments

which provide for restriction of owner's rights. If the owner refuses to enter into agreement, the govt. can make an order restricting certain rights of the owner & preserving the monument etc. which will be binding on the successor – by inheritance and/or sale. Director General can, if necessary, give orders prohibiting contravention of the agreement. The owners should be heard on such orders. If there is any endowment to repair a protected monument & the owner does not agree the central governments can sue the owner & the decision of the court shall be binding. Central Government has also powers to acquire the protected monuments etc. under the Land Acquisition Act, 1894.

Section 14 mandates the Central Government to maintain every monument acquired under the Act and every monument where guardianship is acquired. Section 2(f) reads: “maintain” with its grammatical variations and cognate expressions, includes the fencing, covering, repairing and cleansing of a protected monument and the doing of any act which may be necessary for the purpose of preserving a protected monument or of securing convenient access thereto. If a protected monument is a place of worship the central government shall prevent misuse, pollution & desecration of it. The central government may relinquish the rights acquired in respect of any monument or the guardianship assumed under this Act. But the Act does not lay down the grounds on which such relinquishment may be made.

S.18 provides that the protected monuments shall be open for public subject to rules under this Act. 1959 rules (AMASR) provide that the DG may direct that certain monuments or parts there of shall not be open to public. Rules also provide for regulating, clearing, entrance fee, meeting, parties, filming etc..

**Excavations & antiquities** - The excavation in protected areas and other than them are regulated. The antiquities may be compulsorily acquired by the Central Government. The principles for compensation are laid down.<sup>29</sup> Antiquity includes –

- (i) any coin, sculpture, manuscript, epigraph, or other work of art or craftsmanship
- (ii) any article, object or thing detached from a building or cave
- (iii) Any article object or thing illustrative of science, art, crafts, literature, religion, customs, morals or politics in bygone ages
- (iv) Any article, object or thing of historical interest &
- (v) 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.<sup>30</sup>

**Penalties** The following acts are punishable with fine up to Rs.5000/- (1) removal, injury, alteration, defacement, destruction, imperil or misuse of a protected monument.

(2) Contravention of order of C.G. by owner or occupier

(3) Removal from protected monument any sculpture, carving, image, bas relief, inscription or other like object

The court convicting the person can order such person to restore the antiquity to the place from which it was removed.

Section 19 restricts the owner/occupier of protected area from constructing any building within the area or carry on mining, quarrying etc. without permission of central government. Contravention of such restrictions will invite a penalty of imprisonment up to 3 months or with fine up to Rs.5000/- or both. Presidency magistrate or magistrate of I class shall try the offences & the offences shall be deemed to be cognisable.<sup>31</sup>

#### **The Ancient Monuments Preservation Act, 1904 (AMPA)**

This was enacted to provide for the preservation of ancient monuments and of objects of Archaeological, historical or artistic interest. AMASRA is framed in same lines AMPA applied to ancient monuments other than those of national importance. But many states of India have enacted their own legislations in similar lines and in such states AMPA is declared repealed & not applicable. **Maharashtra Ancient Monuments and Archaeological Sites & Remains Act, 1960** goes a step further. It defines ancient monument following AMASRA and 'antiquity' following the AATA but fixes the age as not less than 50years.<sup>32</sup> The government of Maharashtra is empowered to control moving of antiquities in public interest by notification and to compulsorily purchase antiquities for preservation.<sup>33</sup> The Maharashtra Act provides for constituting of a **State Advisory Board** to advise the govt. in preservation & maintenance of monuments, sites etc & in the administration of the Act<sup>34</sup>

#### **Law of local bodies and town planning**

The local bodies and town planning authorities have also a role to play in the preservation of cultural heritage. Schedule XII, Indian Constitution empowers the municipalities in respect of urban planning including town planning, regulation of land use and construction of buildings and promotion of cultural, educational, and aesthetic aspects, inter alia. **Maharashtra Regional Town Planning Act 1966** has been amended in 1994 to provide

for control on development in order to protect heritage buildings and heritage precincts. S.22 requires that the development plan shall provide for preservation of features, structures or historical, natural, architectural and scientific interest and educational value and of heritage buildings and heritage precincts inter alia. Any and every development of a heritage building or a heritage precinct requires permission of the planning authority under the Act(S.43) The Development Control Regulations under the Act provide for an expert body- The **Heritage Conservation Committee** consisting of experts to guide the planning authority. Regulation 67 calls the heritage buildings as those that posterity would not willingly let die. The regulation grades the heritage buildings from the point of their value into I, IIA, IIB and III and provides for control of development in respect of them accordingly.

### **Latest Developments**

Central government on 15<sup>th</sup> May 1991 notified under AMASR Rules 1959 that an area up to 100 meters from the protected limit of the monument has been declared as prohibited area for any construction activity and further up to 200 meters of such protected monument the area is declared as regulated area in which construction can be allowed only after taking permission from the Director General, ASI.

President of India has on 23<sup>rd</sup> January 2010 promulgated the **AMASR (Amendment and Validation) Ordinance 2010**. The **AMASR (amendment and validation) Bill 2010** is pending in the Lok Sabha. The bill seeks to replace the Ordinance and to go further beyond it. It seeks (retrospectively from 1992) to provide for notification by the Central Government of important public works and projects and permission for repairs and renovation of buildings and other constructions which existed in the prohibited areas of the monuments prior to 16<sup>th</sup> June 1992 and for validation of actions of DG from 1992 till date. Thus the bill seeks to give statutory status to the 1991 notification relating to prohibited area and regulated area.

The bill seeks to altogether ban constructions including public constructions in the Prohibited Area after the bill is passed and Presidential assent is obtained.

**Competent Authority (CA)** –the bill seeks to appoint such CA to consider applications for constructions, renovations etc. and grant permissions.

**Heritage Bye- laws** in respect of each protected monument shall be framed by CA in consultation with experts. These shall be laid before the Parliament and made available to the public.

Effective Deterrence – the bill seeks to enhance the penalty to ensure effective deterrence.

**National Monuments Authority (NMA)** The bill seeks to establish a NMA through Central Government notification consisting of a whole time Chairman, 10 members (5 whole time and 5 part time) DG as ex-officio member and a member secretary. Selection, salaries etc and removal are detailed. The proposed section (S. 20 I) on functions and powers of NMA lists the following-

(1) make recommendations to the Central government for grading and classifying protected monuments and protected areas declared as of national importance till the commencement of the amendment 2010 and also regarding monuments and areas which may be declared there after.

(2) over see the work of CAs.

(3) to suggest measures for the implementation of the provisions of the Act

(4) to consider the impact of large-scale developmental projects, including public project and projects essential to the public that may be proposed in the regulated areas and make recommendations in respect of them to the CA.

(5) to make recommendations to the CA for grant of permission

NMA shall have powers vested in the civil court s in respect of summoning witnesses and production of documents.

### **Role of Public Interest Litigation (PIL) in India**

PIL has been of great help in enforcing public duties and collective or diffused interests. Public-spirited individuals/organizations take up matters of public interest before the courts and seek remedy through judicial review and intervention. Whenever there is a public wrong or public injury caused by an act or omission of the state or a public authority which is contrary to the constitution or the law, any member of the public acting bonafide and having sufficient interest can maintain an action for redressal of such wrong or public injury.<sup>35</sup> PIL continues to flourish in India before the various High Courts and the Supreme Court.

PIL has been instrumental for the growth of splendid number of principles in the protection and preservation of the environment. To cite a few-

Right to pollution free air, right to pollution free water, right against noise, and right to a wholesome environment have been recognized as fundamental rights.<sup>36</sup> Sustainable development has been held to be a binding principle of Indian jurisprudence. Polluter pays principle, precautionary principle, intergenerational equity and public trust doctrine have been invoked and applied in environmental cases.<sup>37</sup> Judiciary has upheld the citizen's constitutional duty to protect the environment. State inaction and indifference has been condemned referring to the duty of the state to protect the environment under Article 48A. State's duty to educate the masses as to their responsible conduct towards the environment has been recognized and enforced.<sup>38</sup>

Taj Mahal, a monument protected under AMASRA and a World Heritage Site, was threatened by emissions of industry in and around Agra. The PIL battle was fought for over ten years before the Supreme Court. In **M C Mehta v UOI (taj trapezium case)** the court directed that all the industries operating in TTZ must use natural gas as substitute for coke/coal or relocate.<sup>39</sup> In the **M C Mehta v U O I (taj corridor scam case)** SC has kept in view Article 49 while entertaining the PIL against the UP government's Taj Heritage Corridor Project. Construction of food plazas, shops, and amusement activities near Taj had to be given up on the PIL.<sup>40</sup>

The High Court of Delhi decided a PIL filed against the construction of DDA officers club in the land within 100 meters of Siri Fort Wall in **Vishwanath Pratap Singh v UOI**.<sup>41</sup> Siri Fort Wall signifies the only place in the whole of Asia and Europe where Mongols were actually defeated and their armies turned back in total humiliation. The epic story of the triumph of our country is engraved in the stones of the wall. Considering Article 49, Schedule VII division of powers and AMASRA and AMPA the court entertained the PIL and held that the construction was in violation of the 1992 notification prohibiting construction activity in 100 meters area and regulating 200-meter area of protected monuments.

Orissa High Court suo motto took up the matter of priceless antiquities lying in the State malkhanas involved in criminal trials on the basis of a report submitted by the Registrar (I and E) of the court. Stone and metal sculptures kept lying in the malkhanas of the state long after the trials were over because nobody claimed them as owners. **In the matter of Preservation of Antiquities involved in criminal trials**<sup>42</sup>, the court directed

that these antiquities should be handed over to the state museum in order to ensure proper and safe custody of them and enable interested academicians and historians to undertake research studies. The state museum was required to appropriately identify and separately display the items as “*antiquities involved in judicial proceedings- court’s property*”. The court laid down that the judicial officers shall in future direct handing of antiquities to state museum following proper procedure.

In **Rajeev Mankotia v Secretary to the President of India**<sup>43</sup>, Supreme Court declared Vice regal Lodge at Shimla and appurtenant land as historical heritage and directed the Government of India to notify the entire area as protected area and ensure proper maintenance of this and all other national monuments. The government neglected to consider the Lodge, a harbinger of Colonial past with architectural grandeur and beauty of Elizabethan Era, as a historical monument standing as the witness to the transition of independence to the Indians. The Lodge is now a historical monument *fait accompli* by the order of the court. But for the PIL the Lodge would have become another five star hotel.

The National Textiles and mill structures in Mumbai owe their heritage status to the PIL – **Indian National Trust for Art and Cultural Heritage and others v State of Maharashtra**<sup>44</sup>. By ad interim stay demolition of 77 structures was prevented. The High Court directed that once structures were listed under D C Regulation 67, Municipal Corporation was bound to hear the objections to development of them.

In **Dr. Anhita Pandole v State of Maharashtra**<sup>45</sup>, the High Court looked into the lawfulness of hoardings on heritage buildings and heritage precincts in Mumbai. The Mumbai Municipal Commissioner’s decisions contrary to the advice of the Mumbai Heritage Conservation Committee were quashed.

### **Conclusions and Recommendations**

Our cultural heritage is astoundingly rich and vast. We are duty bound under international law as well as Indian law to preserve our cultural heritage. Although the Constitution recognizes the significance of cultural heritage and there are piece meal legislations, there is no authority at National and State level to deal with the management of cultural heritage in a wholesome manner.

The crimes under AMASRA and AATA shall be viewed seriously. There are no special courts established. The matters that require special care and quick disposal are tried by regular criminal courts along with other offences. Persons intentionally damaging

heritage monuments are tried under Indian Penal Code 1860 for criminal mischief to property and/or under Prevention of Damage to Public Property Act 1984. There is no special law to deal with such offences. Antiquities involved in criminal trials rot and waste in government malkhanas. Except in Orissa there is no arrangement to preserve them and exhibit them.

Cultural heritage management will require huge research, encouragement of NGOs in this field and creation of widespread information and awareness in the people. Considering Articles 49 and 51A(f) and (i) and WH Convention and other instruments, India is under an obligation to create awareness about the need to protect cultural heritage. But there are no statutory provisions entrusting such responsibility to any authority.

The number of PILs in respect of heritage matters does not match the vastness and richness of our heritage. The reasons probably are the low level of public awareness and the less number of NGOs in this field.

The following recommendations are made-

1. There shall be, by statute, established a **National Commission for Conservation of Cultural Heritage** with the following functions-

- a. Study of treaties and other international instruments on cultural heritage and recommend suitable legislative and administrative measures
- b. Undertaking and promotion of research in cultural heritage
- c. Spreading awareness in the people to strengthen appreciation and respect for heritage.
- d. Review national and state laws on cultural heritage and suggest reforms.
- e. Encourage good NGOs in this field.
- f. Assist in framing a national policy on cultural heritage.

Cultural heritage should include architectural, literary, historical, moveable, intangible and under water cultural heritage. The international developments shall be reflected in the definition. The National Commission shall be composed of experts in the field.

2. Government shall consider increasing the number of awareness programmes. Importance of preservation of cultural heritage should be part of school curriculum.

3. S14 of AMASRA should be amended to guide the central government as to relinquishment of rights acquired in respect of any monument or of guardianship. There should be a specific requirement to record reasons for such relinquishment.



4. AMASRA should be amended to include penalties for intentional damage and destruction to heritage buildings and monuments. Penalty shall be severe and executive clemency shall not be permissible in such cases.

5. Special courts shall be established under AMASRA and AATA. The antiquities involved in criminal trials shall be required under these statutes to be sent to museums without delay.

6. IITA shall be amended to make it mandatory for every collector who receives a notice of finding any treasure to notify the State Archaeological Department about the same.

7. There shall be framed a national policy on Cultural Heritage.

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

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*Notes and references*

1. *Universal Declaration of Human Rights 1948, International Covenant on Civil & Political Rights 1966, International Covenant on Economic, Social & Cultural Rights 1966, U. N. Declaration on Right to Development 1986.*
2. *Guided by Article 3, Convention for the Safe guarding of the Intangible Cultural Heritage, 2003.*
3. *Article 6*
4. *Article 3*
5. *Article 4*
6. *Article 5*
7. *Articles 27, 28*
8. *Article 29*
9. *Article 8, 9*
10. *Article 11*
11. *Articles 22, 23*
12. *Article 35*

13. *U. N. Charter Article 2 & Nicaragua v US 1986(ICJ)14*
14. *Chorzow factory (Indemnity) case (1928) PCIJ29*
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16. *Arts 8, 9, 14*
17. *Entries 10 – 21, List I, Sch – VII, Constitution of India*
18. *Article 49, Constitution of India*
19. *Schedule VII, Constitution of India*
20. *Article 254*
21. *Article 51 A (f) & (i)*
22. *S. 2(a)*
23. *S.2 (b)*
24. *S.25*
25. *S.13*
26. *S.14*
27. *S.19, 20*
28. *S.39*
29. *S. 21 – 28*
30. *S .2(1) a*
31. *S.30 – 33*
32. *Ss. 2(1), (2)*
33. *Ss. 25, 26*
34. *S. 30*
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36. *Rural Litigation Kendra v U. P. AIR 1988 SC 2187; Subhash Kumar v State of Bihar, (1991) 1SSC 598, M.C. Mehta v UOI (Ganga) AIR 1988 SC 1115, Burrabazar Fire Works Dealers v Commr. of Police, AIR 1998 Cal 121*
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39. *AIR 1997 SC 734*
40. *2007(1) SCC 110*
41. *Manu / DE/1490/2002*
42. *AIR 1999 Ori 53*
43. *AIR 1997 SC 2766*
44. *MANU/MH/0189/2006*
45. *MANU/MH/0396/2008. See also S.N. Rao v State of Maharashtra MANU/SC/0423/1988*

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