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# CULTURAL HERITAGE POLICIES IN INDIA: AN OVERVIEW

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Abhishek Kajal, Indian Institute of Management, Rohtak

## ABSTRACT

With industrialization and commercialization either finding methods to cash in on the history's economic worth or erasing it in the name of development, India's cultural heritage has seen considerable changes throughout time. It is a common trend that legacy is frequently viewed as an unimportant phenomena, therefore protecting and conserving it is now more crucial than ever. The current regulations for cultural asset preservation are ineffective on their own terms. The policies are there, but there is still disagreement on how they should be implemented. This article illustrates how laws control how policies are implemented. It also looks at how the policies aren't being applied correctly and identifies the causes. This study also suggests a comprehensive and all-encompassing notion to protect Indian heritage outside the bounds of existing legal standards by offering some corrective methods, varied strategies, and suggested ways that should be explored for conserving and safeguarding cultural legacy

**Keywords:** Heritage, Law, Heritage Policies, Modernization, Commercialization.

## **INTRODUCTION**

Cultural heritage is the legacy of tangible items and components that are a part of a group or culture, are handed down from earlier generations, are preserved in the present, and are provided to benefit future generations. The term "heritage" can also apply to material culture, which includes artefacts, books, monuments, landscapes, and physical constructions. Because it describes people's values, beliefs, and objectives, culture serves as a reflection of a nation's identity. Since it protects the integrity of our country, it is essential to protect our cultural heritage. Rather than the cultural expression itself, what makes it so significant is the wealth of knowledge and skills that are transmitted through intangible cultural inheritance.

## **STATEMENT OF PROBLEM**

Industrialization and commercialization either find ways to cash commercial value of the heritage or sweep away the heritage on the development grounds. Many a time it is a general tendency in heritage is considered an irrelevant phenomenon. Hence, it is a need of the hour to protect the heritage, especially with the help of legal measures. In this study, we will look at how heritage policies are being implemented in India and identify any shortcomings.

## **OBJECTIVES OF STUDY**

1. To highlight the prevailing legal framework for the protection of Indian heritage.
2. To examine the heritage policies pertaining to preserving the Indian heritage.
3. To draft and propose an all-encompassing/holistic idea to protect the Indian heritage beyond the prevailing legal practices.

## **SCOPE OF PROJECT**

The concept of developing art and culture evolved to preserve the heritage of India. There is still a need for legal involvement to safeguard India's history when essential, despite numerous advancements in cultural rules and legislation. Keeping in view the research problem and review of literature on the proposed domain, there is no significant research available to date. Hence, it is a relevant research problem that needs to be carried out in the internship programme. Social, cultural and environmental aspects are also involved in the said research area.

## LITERATURE REVIEW

Despite the fact that there hasn't been any significant research in this area. However, the research papers that follow focus in particular on the issues and viewpoints surrounding cultural heritage policies.

Winter, J. C. (n.d.) mentions Indian organisations that just utilise heritage preservation as a tool to advance their own political or financial interests provide a further issue. His study highlights that politics may be the only means by which other Indians, particularly those without a land base like the urban communities, may safeguard the limited cultural traditions they still have. According to him, Archaeologists are curious about many of the items that are significant to Indians because of their fascination with their culture, including artefacts, village structures, graves, and other heritage materials.

Srivastava, S. (2014, November 30)<sup>1</sup> discusses that a variety of activities that develop public awareness and appreciation is one of the most successful strategies to build and preserve respect for a community's heritage. She explains that understanding and participation of the local population is critical to the success of historical protection programmes. When societal change happens gradually, the new cultural elements can be integrated more readily. Both formal education and adherence to the normative way of life are essential; they might be carried out deliberately or subconsciously.

Notwithstanding this being a relevant area of study, no noteworthy research has been revealed. Sincere doctorate study is required for the subject at hand, and unique projects must be carried out to place more of an emphasis on the requirements of cultural heritage.

## LEGAL FRAMEWORK FOR THE PROTECTION OF INDIAN HERITAGE<sup>2</sup>

Even the British Government recognised the value and significance of preserving a nation's valuable assets, which is why the Ancient Monument Preservation Act, 1904 (First move) was passed to exercise control over exploration in specific locations and for the protection and

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<sup>1</sup> Srivastava, S. (2014, November 30). A study of awareness of cultural heritage among the teachers at university level. *Universal Journal of Educational Research*.

<sup>2</sup> **Ministry of Culture, Government of India**. (n.d.). Retrieved July 31, 2022, from <https://www.indiaculture.nic.in/>

acquisition of ancient monuments in specific circumstances. The present legal framework is as follows:

**‘Article 29’** of the Constitution<sup>3</sup>: “Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same”

**‘Article 49’** of the Indian Constitution<sup>4</sup>: “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.”

**‘Article 51 A(F)’** of the Constitution<sup>5</sup>: "It shall be the duty of every citizen of India to value and preserve the rich heritage of our composite culture"

### **The Delivery of Books (Public Libraries) Act, 1952<sup>6</sup>**

The National Library and public libraries get books through this arrangement. The latest amendment to the 1952 Delivery of Books & Newspaper (Public Libraries) Amendment Act was made in 1965. Every book and newspaper published in India must be sent to the National Library in Calcutta in accordance with the Delivery of Books and Newspapers (Public Libraries) Act of 1952. Publishers are legally required to deposit their works with the National Library, but there is also a benefit to doing so. They have a great chance to use the Indian National Bibliography's platform to spread the word about their works as much as they can, both in India and pretty much everywhere else in the world..<sup>7</sup>

### **The Ancient Monuments and Archaeological Sites and Remains Act of 1958<sup>8</sup>**

“An Act to regulate archaeological excavations, safeguard sculptures, carvings, and other similar things, and provide for the preservation of national significance archaeological sites,

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<sup>3</sup> Constitution of India. (n.d.). CAD. Retrieved December 31, 2022, from [https://www.constitutionofindia.net/constitution\\_of\\_india/fundamental\\_rights/articles/Article%2029](https://www.constitutionofindia.net/constitution_of_india/fundamental_rights/articles/Article%2029)

<sup>4</sup> ibid

<sup>5</sup> ibid

<sup>6</sup> THE DELIVERY OF BOOKS (PUBLIC LIBRARIES) ACT, 1952. <https://legislative.gov.in/>. (n.d.)

<sup>7</sup> Barman, B. (2020). A comprehensive book on Library and Information Science. New Publications.

<sup>8</sup> AMASR ACT 1958. (n.d.). Retrieved, from [https://www.nma.gov.in/documents/20126/51838/AMASR\\_Act2010\\_Gazette\\_Notification.pdf](https://www.nma.gov.in/documents/20126/51838/AMASR_Act2010_Gazette_Notification.pdf)

remains, and ancient and historical monuments”.<sup>9</sup>

- The AMASR Act mandates the protection of nationally significant archaeological sites, ancient and historical monuments, and artefacts.
- It outlines rules for controlling archaeological digs and protects carvings, sculptures, and other such artefacts.
- Under the guidelines of this statute, the Archaeological Survey of India conducts its operations.
- The Act forbids development within the 100-meter "prohibited area," which surrounds protected monuments.
- Except in limited circumstances, it does not enable development in such banned zones, even if it is for public use.
- The banned area may be extended by the federal government beyond 100 metres.
- The Archaeological Survey of India owns all of these mentioned monuments.

### **The Antiquities and Art Treasures Act, 1972<sup>10</sup>**

An act to control the export of antiquities and art treasures, stop antiquities smuggling and fraudulent dealings with them, require the purchase of antiquities and art treasures for preservation in public places, and address some other issues related to, incidental to, or ancillary to the aforementioned. It stops the smuggling of antiquities and fraudulent activities with historic sites. ‘Additionally, it controls the export of priceless works of art and antiquities.’<sup>11</sup>

### **The AMASR (Amendment and Validation) Act, 2010**

The main changes were the creation of a "regulated area" 200 metres outside the restricted area, in which any construction needs approval from a newly established National Monuments Authority, and the establishment of a "prohibited area" 100 metres along each national monument, in which no construction, either public or private, is allowed. The Act also recommended that given each monument's uniqueness, heritage by-laws for each one be developed by an expert committee.<sup>12</sup>

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<sup>9</sup> Amasr act. Optimize IAS. (n.d.). Retrieved, from <https://optimizeias.com/amasr-act/>

<sup>10</sup> The antiquities and art treasures act, 1972 . (n.d.). Retrieved August 2, 2022, from <https://legislative.gov.in/sites/default/files/A1972-52.pdf>

<sup>11</sup> ibid

<sup>12</sup> The AMASR (Amendment and Validation) Act, 2010. [www.nma.gov.in](http://www.nma.gov.in). (n.d.). [https://www.nma.gov.in/documents/20126/51838/AMASR\\_Act2010\\_Gazette\\_Notification.pdf](https://www.nma.gov.in/documents/20126/51838/AMASR_Act2010_Gazette_Notification.pdf)

- According to the Amendment Act, no construction permits, including those for government or public projects, are allowed in the restricted area surrounding centrally protected monuments and protected areas.
- However, it mentions that maintaining and renovating already-existing buildings and structures is acceptable.
- The Amendment Act prohibits any rebuilding of the current structure.

### **The AMASR (Amendment) Bill, 2017<sup>13</sup>:**

According to the Act, a prohibited area is a 100-meter radius surrounding a monument or other protected place. The banned area may be extended by the federal government beyond 100 metres. Except under limited circumstances, the Act prohibits building in such restricted zones. The Act forbids building in prohibited zones as well, even if it is for a public purpose. The Bill modifies this clause to allow public works to be built for public purposes in prohibited zones.

According to the Bill, "public works" are any infrastructure projects that are financed and implemented by the national govt for the benefit of the general population. This infrastructure has to be based on a specific instance of safety threat and be required to maintain public safety and security. "There should also be no reasonable alternative to constructing in the banned region," the statement continued.<sup>14</sup>

### **STAKEHOLDERS**

Stakeholders are crucial in the development and administration of sustainable cultural heritage. Important stakeholders for preserving the culture are

1. Legislature (Law Maker)
2. Government (Executor)
3. General Public
4. Heritage Admirers
5. Non-Governmental Organizations

### **RESEARCH DESIGN**

The doctrinal research design will be used to accomplish the goals of the current investigation.

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<sup>13</sup> *ibid*

<sup>14</sup> The ancient monuments and archaeological sites and remains (amendment) Bill, 2017. PRS Legislative Research from <https://prsindia.org/>

In this endeavour, the inadequacies in the efficient implementation of cultural heritage policies in India will be investigated using the doctrinal design. The main primary data sources on this subject will be used to do this. However, secondary data sources have been taken into account in cases when these original sources were unavailable or inaccessible.

### **TOOLS FOR DATA COLLECTION**

The study entails gathering data from online sources, specifically from journals, books, periodicals, papers, authoritative government websites, and generally from the trusted websites that are accessible online. Additionally, information was gathered through site visits or actual physical verification of data, and this study involved speaking with participants like the general population in the area and the convener of the relevant NGOs.

### **THE QUESTIONNAIRE AND OTHER METHODS USED**

Since the data collection has been made purely on the basis of physical verifications, interviews and online sources, no direct questionnaire was used in this study. However, it was observed that the recognized data from these methods along with the data retrieved from the official website of Indian culture will best suit as a framework for analysis to examine the effective implementation of the AMASR scheme in the Indian sector and the challenges thereof.

### **EVALUATION OF THE LEGAL POLICIES**

The identity of a nation is shaped by its culture. We must safeguard our cultural heritage in order to maintain our feeling of national identity. However, the quantity of skills and information that are primarily passed down from one generation to the next makes up for the lack of significance of cultural manifestations itself in terms of cultural heritage. Therefore, there is an immediate need to protect it with the effective implementation of these policies. But the same has not been fulfilled due to the following possible reasons:

#### **Re-allocation of power**

All of the aforementioned policies are in place at the national level to preserve and protect India's cultural heritage, but it is clear from these policies that the government is playing a dominant role in their implementation and that it has some authority that could allow it to subvert the goals of these policies. Because they are now exclusively responsible for carrying out Union programmes, the States' authority has been constrained. States are required to

provide a percentage of the expenditures for the 131 centrally financed programmes, of which a select few dozen receive 90% of the funds. States are not given any powers to change or modify the implementation of these policies. In actuality, the state-developed or state-controlled plans are what has shown to be advantageous to the populace and have aided in societal advancement'.<sup>15</sup> States have been successful in developing innovative policies that have been embraced at the national level thanks to democratic inclinations. For ex: Implementation of MGNREGA.

### **Ineffective policies**

One of the main causes of this is that these policies were created decades ago, long before the requirements and standards of life of the population had changed, giving birth to concepts like modernization, urbanisation, and globalisation, which are frequently used today. These phrases are being used as an excuse to obstruct efforts to preserve Indian culture. Additionally, the Archaeological Survey of India is unable to have an effectively updated conservation policy for appropriately channelling the upkeep of the monuments in order to meet the demands of conservation and preservation. The importance or need of monuments in need of conservation have no set standards for grading. As a result, monuments chosen for conservation programs are chosen at random which hinders the process of its effective implementation.

Additionally, the most recent revision to the AMASR (2017) allows the Government to intervene in these monuments' forbidden zones under the pretext of 'public works. The planned alterations directly endanger the monuments, which are already in danger because of pollution, human involvement, and nearby construction activity.

- More frequently than other local infrastructure projects that could potentially disrupt tourism, the central government does public works.
- Vibrations and particle pollution from the building techniques and equipment might seriously harm certain aesthetically and structurally fragile monuments.
- The government prioritises growth above the environment as a result, which will discourage them from caring about the environment.

### **Effect of modernisation**

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<sup>15</sup> Bachek, S. H., Haron, N. A., & Zainudin, H. (n.d.). Preservation of Culture and Built Heritage in New Urban Development: A Case Study on Little India Brickfields. from <http://ipedr.com/vol174/001-ICHHS%202014-S00005.pdf>



Heritage as buildings and surrounding historic regions have been neglected as a result of current rapid urbanisation and sectoral approaches to city development. The quality of life is compromised when urban settings deteriorate with time, and there are fewer opportunities to use history for commercial activities like tourism and handicrafts. A significant element influencing cultural heritage and its preservation in local, national, and international contexts is the policy environment. In order to manage cultural assets, policy develops shared ideas, sets objectives, and chooses appropriate courses of action.<sup>16</sup> Hence, there must be advanced legal policies with an effective implementation that will align the modern culture with the cultural heritage and positively contribute to the cultural heritage which has not been possible till now. One such example is the electronic preservation of manuscripts.

### **Insufficient invigilation**

The Ministry of Culture's governance needs to be more effective in all areas, including the availability of human resources to related agencies, the sufficiency of policy and law, and financial management. The government does not prevent visitors from entering these sites of cultural heritage or from taking religious responsibility for them in whole or in part. They are not authorised to do so, and by using the monument or a portion of it for their community's religious purposes, they degrade and contaminate such cultural heritages. As a result, historical places are being harmed by a number of environmental contaminants also. For instance, many individuals pollute and render unfit for preservation very significant and very old rivers like Sutlej (Punjab) by disposing of a great deal of rubbish and junk in them. The penalties for offenders are also minimal because they can only be punished with a maximum three-month sentence in jail or a maximum fine of 5,000 rupees.

### **Example**

#### **The Indian National Trust For Art and Cultural Heritage vs The Chennai Metropolitan (On 29 April, 2010)<sup>17</sup>**

In this case, the INTACH NGO filed public interest litigation for the protection of the Bharath Insurance Building from being demolished by the government agencies which was recognized

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<sup>16</sup> The ancient monuments and archaeological sites and remains act, 1958 ... (n.d.). from <https://legislative.gov.in/actsofparliamentfromtheyear/ancient-monuments-and-archaeological-sites-and-remains-act-1958>

<sup>17</sup> The Indian National Trust For Art and Cultural Heritage vs The Chennai Metropolitan (Madras High Court April 29, 2010). Writ Petition No.25306 of 2006

as a symbol of heritage conservation. The building goes back to 1868 and was one of the finest examples of Indo-Saracenic architecture in the country. The High Court in its decision found no justification for allowing the building to be torn down without at least trying to save as much of the heritage building as possible, if not the entire heritage structure. Therefore, INTACH won the case.

## **SUGGESTED MEASURES**

### **Effective master plan**

Good master plans are flexible and have incorporated the community and other stakeholders from the beginning, providing the cultural heritage with a solid foundation and increasing the likelihood that it will be realised. While conditions vary from location to location, the need to comprehend the cultural heritage's current state, foster and increase community interest and participation, develop a fresh and shared vision for the cultural heritage future, and/or develop a solid and clear set of recommendations and an implementation strategy, frequently determines the need for a master plan. Each monument should have a master plan that takes into account its location, area, structure, foot traffic, and other vulnerabilities in order to be managed and conserved properly.

### **Allocation of powers**

For the whole cultural sector, distribution is the most important link in the value chain. Under the Indian Constitution, the states are responsible of providing and distributing power to consumers in both rural and urban areas. However, as was already noted, the state has not been granted much authority in the execution of cultural policies; thus, the federal government should grant more authority to the state governments, which will unquestionably improve the effectiveness of the policies.

### **Appropriate Funding**

It is clear that governments need to supplement their financial resources with more cash transfers made possible by centrally funded programmes, where the implementors should have some flexibility. The success stories of many nations should be taken into consideration when creating such plans. This will deal with a number of development-related issues. Therefore,

there must be a proper allocation of funds for conservation projects and maintenance. Further, appropriate budgeting for conservation works would solve the problem.

### **Creating Awareness**

The Government should create more awareness through various awareness programs, which will help in filling the gap in the implantation of these policies. Addressing societal concerns requires raising public awareness. Raising public awareness doesn't entail telling people what to do; rather, it entails outlining issues and spreading knowledge so that individuals may make their own decisions. People may therefore address the issue by fully grasping it and identifying the best solutions.<sup>18</sup>. Therefore, people can tackle the problem by comprehending it and discovering appropriate answers. Creating awareness will make people understand and be more responsible for cultural heritage, which will ultimately solve the problem.

### **Effective role of non-governmental organizations**

Knowledge, oral traditions, skills, and other forms of cultural legacy that are valued by communities are referred to as intangible cultural heritage. In recent decades, non-governmental organisations (NGOs) have gained recognition as significant players in a variety of disciplines, including international development, human rights, and the arts and entertainment. In the world of policy, interest in NGOs' capacities as cultural intermediaries has grown. The nongovernmental organisations (NGOs) should act as possible agents for strengthening non-tangible cultural assets at the level of policy and practice.

### **Balanced Approach**

Modernization and urbanization are crucial for the societal development of a rising nation like India. Government should strive to develop with as little negative influence as possible on the environment and cultural heritage. India's tourist industry has a lot of untapped potentials, thus the government should take a balanced approach to growth and landmark preservation. Development shouldn't be done at the expense of our natural or cultural heritage.

### **CONCLUSION**

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<sup>18</sup> Winter, J. C. (n.d.). Indian Heritage Preservation and Archaeologists. *American Antiquity*, Jan, 1980, Vol. 45, No. 1 (Jan., 1980), pp. 121-131.

Heritage serves as a reflection of people's national identities by outlining their values, beliefs, and aspirations. Since it protects the integrity of our country, it is essential to protect the cultural history. As far as the prevailing policies pertaining to the protection of heritage are concerned, these are ineffective on their own grounds. The policies are there but the implementation of these policies is under a question mark. Each monument should have a master plan that takes into account all its vulnerabilities in order to be managed and conserved properly. Government, NGOs, environmentalists, and heritage enthusiasts are only a few of the groups active in heritage preservation, yet policy implementation is still inadequate since there is a lack of coordination among these groups. More earnest efforts need to be undertaken, according on the overall appraisal of these policies and their future implementation.

### **LIMITATIONS OF THE PROJECT**

The present study has relied upon cultural heritage data from up to district levels. This may not be a truly representative sample of the overall heritage and monuments of India. Also, this study has used data from some subjective articles and magazines for the purpose of analysis. Further, there was very limited time for data collection as the internship span was only around 4 weeks due to which there could not be a specific category for sample collection to evaluate the cultural heritage policies of India.

### **DIRECTIONS FOR FUTURE RESEARCH**

The outcome of this study is calculated with the use of online data, interviews, site visits or doctrinal methods. It can be empirically verified using a non-doctrinal research method by collecting physical data and doing hypothesis testing for proper validation of the results obtained from this study. Also, the obtained results are from a limited sample of the Kapurthala district, therefore data can be expanded to cover the remaining Indian states and districts for proper validation of the derived results