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**THE PROTECTION, CONSERVATION AND MANAGEMENT
OF ANCIENT NATURAL MONUMENTS AND
ARCHAEOLOGICAL REMAINS: THE CONSTITUTIONAL
AND LEGAL MANDATE**

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INTRODUCTION

The present socio-legal system survives in a globalized market, where everything has been converted into the status of commodity having higher rate of liquidity and transferability. Our natural, cultural and historic monuments also have commoditized as part of these new policy. The archaeological remains and sites have achieved such a market value to utilize them for profit making. On this social change and evolution of values, the legal and administrative policies and measures also have changed respectively. There we can see the transformation of the constitutional and legal mandate on the protection conservation and management of ancient natural monuments, archaeological sites and remains in our country. With respect to the changing formulations, the parliament has evolved a new law in this regard by 2010. Hence it is very relevant to examine the socio-economic-cultural impact of those constitutional and legal reforms in a present scenario.

THE RULE OF LAW MANDATE

In different range of responsibilities, the founders of our Constitution, established the need of protection of ancient, natural and cultural monuments this perspective was incorporated in the Directive Principles of State Policy by which the rule of law establishes an obligation on the state to protect every monument, or place or object of artistic or historic value. The state is estimated to declare such materials of natural importance, introduce measures to control and regulate any kind of spoliation, disfiguration, destination, removal, disposal or export of such objects or materials. But in actual practice several questions may be raised in this regard such as who will decide

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the protection value, how will the value be fixed, who is responsible to impose the protection measures, what shall be the measures against law breakers have etc.

The constitution imposes a duty on the individual citizen in order to protect and preserve the rich heritage of our composite culture.² In the absence of justiciability and enforceability how far this duty can be performed by the people. Up to what extent the law makers and law gives can ensure the practice of this legal duty rather than a letter of principle. The existing legislations and allied legal materials miserably failed to achieve the above said goal. There lies the relevance and scope of a comprehensive legislation towards the validation, national conservation, protection and management of ancient monuments and archaeological sites in our boundary. In that sense an analysis on the Amendment Act of 2010 become more important³.

POWER CONCENTRATION ON THE CENTRAL GOVERNMENT

By the Act, the Central Government became more powerful to regulate any construction, reconstruction and repair work within the notified sites or monuments through the designated authorities and officials. The Central Government has been empowered to prescribe categories of ancient monuments and archaeological sites and remains with national importance in concern to their historical, archaeological and other relevant factors⁴. The Central Government is also empowered to classify all such sites, monuments and remains so as to provide public access, information, exhibition and other manner deems fit⁵.

The construction, re-construction and renovation or repair activities mentioned here denotes erection of any structure or building including addition, extension either vertical or horizontal except such activities for public water supply, electricity distribution or such public facilities. The Central Government is empowered to declare notified prohibited area or regulated area in which it can prohibit or regulate above said activities of human being⁶.

² Article 51(A) (f) of the Constitution of India 1950.

³ The Ancient Monument and Archaeological Sites and Remains (Amendment And Validation) Act 2010.

⁴ Section 4 A (1) of The Amendment Act 2010.

⁵ Section 4 A (2) of the Amendment Act 2010, Section 2(La), (b) and Sections 20A and 20B of the said Act 2010.

⁶ Section 7 of the Amendment Act 2010 (Section 20D and 20 E of the Original Act).

All persons shall consider these changes in law with maximum concern because it will affect the federal structure of the nation, role of the State Governments and mandate of local public to conserve and protect any such monuments or sites under their capacity. This will become the sole authority of the Central Government. The validation of such properties may lead to gradual alternation and privatization of those sites and remains for commercial and business purposes with respect to the new policy measures and governmental actions under the existing ‘*Liberlisation Privatisation Globalisation*’ regime. Power to grant permission and license only with assent of the President shall consolidate unscrupulous authority in the Central Government and which will adversely affect the individualistic freedom and right to life and livelihood in every respects. Such a conflict of power and authorities in between different stake holders will defeat the object and aim of the legislation itself.

POWER OF COMPETENT AUTHORITY

Apart from the prohibited areas, in the regulated areas, the power to grant permission is vested with the Competent Authorities. They shall intimate the impact of the project on the heritage sites, monuments or remains, to the concerned authority as the case may be, according to the prescription of the central government. Hence the recommendations of the competent authority shall be final. If the permission is refused by the authority it shall be a speaking order in writing with adequate reasons. The authority has a power to withdraw permission on sufficient reasons as the case may be. Here also considerable discretionary powers are concentrated to certain authorities with larger finality in the exercise of such powers. It can be pointed out that the principles of Administrative law and due process there under the law have been violated.⁷

HERITAGE BYELAWS AND ENFORCEMENT

Once again the criticism of concentration of power may be established here so that the Act prescribe the formulations of having byelaws in respect of the consultation with the Indian National Trust for Arts and Cultural Heritage, which is a registered body under the Indian Trust Act 1882 and such other experts as notified by the central government. Both the powers to constitute the National Trust and notify the designated experts are vested with central government. Once again the provincial or local Governments are exhausted from their powers⁸. The concepts of community ownership and public trust doctrines also will be negated here.

⁷ Section 8 of the Amendment Act 2010 (section 20 E of the Original Act).

⁸ Section 20 F, 20 G, 20H, 20 I and 20 K of the Original Legislation

NATIONAL MONUMENTS AND HERITAGE AUTHORITY

The proposed authority on historical monuments and archaeological heritage consists of an appointed chairperson and not more than five fulltime members, according to the recommendation of the selection committee. Appointing authority and selection power are vested with the central government. The ex officio members of the selection committee are the officials under the central government and expert members of the selection committee are nominated by the central government. Therefore, absolute discretion of the Government of India shall reflect on such issues. The state governments shall not have any voice in this process; however such a national authority shall have their jurisdiction over the States territories. In addition to that the authority is vested with quasi-judicial powers and its decision can be questioned only before the apex court. This will lead to considerable hardships to the local people in related subject matters.⁹

ABSOLUTE POWER OF THE CENTRAL GOVERNMENT

The said legislation endorses absolute and exhaustive powers to the Government of India. So that the Government attains power to issue directions to the national authority, the competent authorities in the concerned matters. The central government achieves a power to supersede the said authorities in the relevant areas. The Act entrust the central government to issue final decisions in concerned matters, apart from a question of policy or other matter. The exclusion of judicial review capacity may create hardship to the enforcement of the provisions of this enactment in actual practice of law. In law, such a finality provision cannot be justified under Administrative law and Administrative jurisprudence¹⁰.

PENAL PROVISIONS UNDER THE LAW

The recent amendment has been used for enhancing the penalties such as imprisonment and fine. Maximum two years period for imprisonment and one lakh rupees for fine, was incorporated within the penal provisions.¹¹ Offences committed by officials shall be furnished with increased penalties such as three years imprisonment and fine or both as the case may be¹². The Director General shall be vested with a power to conduct

⁹ Section 20 L and N of the Original Act

¹⁰ Section 20 L and N of the Original act.

¹¹ See Section 30, 30(2), 30A, and 30B of Amendment Act 2010.

¹² See Section 30C of the Amendment Act 2010.

surveys and inspections in prohibited and regulated areas, and their result shall be submitted to the central government¹³. The interrogation power, the evidentiary value and the admissibility of information etc. also depends on the central government and officials there under.

INTERNATIONAL DOCUMENTS AND NATIONAL RESPONSIBILITY

There are two relevant Conventions and two other documents in International law on the respective subject matter. The UNESCO Convention in 1972 conceive the protection of the world cultural and natural heritage such as architectural and archaeological properties as well as physical, biological and geological assets along with natural sites. The traditional causes of decay, change in socio economic activities, damage and distribution, gravity of new dangers, threats etc. shall be considered as part of the conservation and protection measures¹⁴. Identification, protection, conservation, preservation, transmission to future generations in respect of cultural and natural heritage shall be the essential responsibility of the member countries. This convention provides for the establishment of world Cultural and Natural Heritage Fund facility and educational programmes so as to support the basic objective of the convention.

The other document¹⁵ was conceived on the deep-seated inter dependence between the intangible cultural heritage and tangible cultural and natural heritage, under the globalization and social transformation process, phenomena of intolerance, deterioration, disappearance, destruction such intangible cultural heritage, lack of resources for safeguarding etc. were considered while resolving such a document. It was intended to evolve a binding multilateral instrument, enforce international agreements, recommendations and resolutions, build up greater awareness among the people and extinct international community contribution. The purpose of safeguard, respect, awareness, co-operation and public assistance were propagated through those materials. The essential definition itself denote practices, representation, exposure, knowledge and skills with respect to the assets including oral traditions, performing arts, social practices, local knowledge, crafts etc. The term safeguard denotes

¹³ See Section 35C of the Amendment Act 2010

¹⁴ UNESCO Convention on World Cultural and Natural Heritage 1972, recognised by the meeting from 17th October to 21st November 1972.

¹⁵ UNESCO Recommendations on the safeguarding of Traditional Cultural Art and Folklore 1989, Universal Declaration on Cultural Diversity 2001 and Istanbul Declaration of 2002 ratified by the 3rd Round Table of Ministers of the States.

identification, documentation, research, preserve, protect, promote, enhance, transmit, such assets through formal and informal means and revitalization of such assets. International co-operation for this purpose is guided to the establishment of Intangible Cultural Heritage Fund facility and establishment of committee on the said subject matter under the umbrella of United Nations.¹⁶

CONCLUSION

Hence absolute exclusion of the local communities, the local governments and State Governments from the allied sections may result in a great blockade to the real performance and practical enforcement of the concerned legislations. There is a larger scope for reform and revisits to laws concerned here. In depth discussion and restructuring is essential in the enactment in order to protect the federal policy, social control and community ownership on our rich cultural, historical and archaeological monuments, sites and remains in further course of time. People collectives, their initiatives, supported with legal authorities shall be with the function of conservation, protection, and management of such properties with respect to the public trusts, precautionary and defaulters' liability principles.

¹⁶ Section 20 L and N of the Original Act.

Afterthoughts

Elections and media: Regulation of opinion polls

Aditi Choudary, WBNUJS

Election funding in India – Forming pathways into the world of corruption

Enakshi Jha, NALSAR

