

ARCHEOLOGICAL MONUMENTS AND SITES: ROLE OF INDIAN JUDICIARY

Navpreet Kaur*
Prof. (Dr.) Ajay Ranga**

ABSTRACT

India is home to a large number of archeological monuments and sites. Every archaeological monument and site tells a different, exquisite history from the past, which distinguishes the country. India is home to a large number of archaeological monuments and sites. Because these structures are valuable from an artistic, historical, and archaeological standpoint, it is now important to preserve them.¹ The Ancient Monuments and Archaeological Sites and Remains Act, 1958, is the major piece of legislation governing archaeological monuments and sites in India. Recognizing the cultural and historical significance of ancient monuments and archaeological sites, this Act was passed with the intention of protecting and maintaining them. In India, the judiciary serves as the guardian of the people's fundamental rights and the Constitution. This article aims to examine the laws that oversee archaeological monuments and sites in India, with a particular emphasis on the role of the Indian court through a discussion of significant rulings. The researchers have attempted to divide the paper into distinct sections. An overview of India's archaeological monuments and sites is provided in the first section, along with a brief explanation of the laws pertaining to these sites and monuments. An extensive discussion of the judiciary's contribution to safeguarding India's archaeological monuments and sites is presented in the following portion of this article. In the last, conclusion and some suggestive measures for the protection of archeological monuments and sites have been given.

KEYWORDS: Archeological Monuments, Conservation, Judiciary, Preservation

1. INTRODUCTION

Since time immemorial, India has been widely recognized for its fascinating rich and diverse heritages, which are the strong reminders of its glorified ancient history. This cultural history typified in heritage monuments originates from a memorable past of old civilisation. The Taj Mahal, Agra Fort and Fatehpur Sikri in Agra, the Konark Sun Temple, Khajuraho Temples, Mahabalipuram Monuments, Thanjavur, Hampi Monuments just as the Ajanta, Ellora and Elephanta Caves are a portion of the monuments announced as World Heritage Monuments.² Every year, the celebrated past and cultural diversity of this nation have created a potent blend for attracting millions of tourists.³ An example of historic architecture or a concrete structure designed to honor a person or significant event from the viewpoint of a social group as part

* Research Scholar, Department of Laws, Panjab University, Chandigarh

** Dean, Chitkara Law School, Chitkara University, Punjab

¹ Ehtesham Patel, "Conservation of Heritage Sites in India", 6 *IJEAT* 5 (June 2017).

² Kanya Saluja, Conservation and protection of heritage monuments in India, (Jan. 29, 2024, 10:04 AM), <https://blog.iplayers.in/conservation-protection-heritage-monuments-india/>

³ Arnab Gantait, Priyakrushna Ushna Mohanty and G. Anjaneya Swamy, "Conservation and Management of Indian Built Heritages: Exploring the Issues and Challenges", 11 *SAJTH* (January 2018).

of their memory of historical periods or cultural heritage is called a monument.⁴

According to Section 2(a) of the Ancient Monuments and Archaeological Sites and Remains Act 1958:

*“Ancient Monument means any structure, erection or monument, or any tumulus or place of interment, or any cave, rock-sculpture, inscription or monolith, which is of historical, archaeological or artistic interest and which has been in existence for not less than 100 years and includes: remains of an ancient monument, site of an ancient monument, such portion of a land adjoining the ancient monument as may be required for fencing or covering in or otherwise preserving the monument and the means of access to, and convenient inspection or, an ancient monument.”*⁵

According to section 2(d) of the Ancient Monuments and Archaeological Sites and Remains Act 1958:

“archaeological site and remains” means any area which contains or is reasonably believed to contain ruins or relics of historical or archaeological importance which have been in existence for not less than one hundred years, and includes:

- (i) *such portion of land adjoining the area as may be required for fencing or covering in or otherwise preserving it, and*
- (ii) *the means of access to, and convenient inspection of, the area;*⁶

The Archaeological Survey of India, which was established in 1861 and is governed by the Ministry of Culture, is in charge of protecting and maintaining India’s archaeological monuments and sites. Archaeological monuments and sites in India are currently protected and preserved under The Ancient Monuments and Archaeological Sites and Remains Act 1958 and this act amended in 2010 as The Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010, the protection of historical landmarks, sculptures, archaeological sites, and other items with significant historical significance is provided by this statute.⁷ In accordance with The Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010, the Indian government established the National Monument Authority under the Ministry of Culture. Its purpose is to manage

⁴ Dr. S.Praveen Kumar, “Monuments for the Development of Tourism”, 11 IJMSSR 87-94 (Oct 2014).

⁵ The Ancient Monuments and Archaeological Sites and Remains Act, 1958, No. 24, Acts of Parliament, 1958, (India).

⁶ The Ancient Monuments and Archaeological Sites and Remains Act, 1958, No. 24, Acts of Parliament, 1958, (India).

⁷ Supra Note 1.

the prohibited and regulated area surrounding the centrally protected monuments in order to safeguard and preserve monuments and sites.

1.1.OBJECTIVES OF STUDY

In India the archaeological monuments and sites are in bad conditions. They are neglected and in bad shape and not being properly protected. The primary objective of this study is to examine the role of the Indian judiciary in the preservation and protection of archaeological monuments and sites. To review and assess landmark judicial decisions those have significantly influenced the conservation and protection of archaeological heritage in India.

2. RESEARCH METHODOLOGY

The research on this topic is a blend of socio legal study. The researcher, in this work, is going to rely mainly on the Doctrinaire method of research, which involves the collection of data from primary and secondary sources. The researcher would mainly depend on the primary sources like Statutes, Regulations and secondary sources such as books, commentaries and articles found in journals, magazines and newspaper review. To complete this research study, online resources were also used.

3. LEGISLATIONS IN INDIA

The preservation and maintenance of India's ancient monuments and archaeological sites are governed by national and state legislation as well as international conventions.⁸ The Indian Constitution states that it is the responsibility of both the government and the people to safeguard and maintain the country's rich cultural heritage. Unfortunately, not many people are aware of the regulations the Indian government has passed to preserve and protect the archeological monuments and sites under its jurisdiction. The following laws in India provide protection for archaeological monuments and sites:

- The Indian Treasure Trove Act, 1878
- The Ancient Monuments Preservation Act, 1904
- The Ancient Monuments and Archaeological Sites and Remains Act, 1958
- The Ancient Monuments and Archaeological Sites and Remains Rules, 1959
- The Antiquities and Art Treasures Act, 1972
- The Wildlife (Protection) Act, 1972
- Environment (Protection) Act, 1986
- Bio-diversity Act, 2002

⁸ The Ancient Monuments and Archaeological Sites in India, available at: <http://www.intach.org/chapters-legal.php>, (last visited on January 4, 2024).

- The Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010⁹

In order, to provide the protection of archaeological monuments and archaeological sites and remains of national value and for the control of archaeological excavations and for the security of works of art, carvings and other like objects the Parliament passed the Ancient Monument and Archaeological Sites and Remain Act of 1958.¹⁰ The Ancient Monument and Archaeological Sites and Remain Act of 1958 contains provisions pertaining to the identification of archaeological monuments and sites of national significance, the purchase of protected monuments, excavations in areas not covered by protection, the authority to regulate the movement of antiquities, the provision of compensation for loss or damage to a site or monument owned by a private party, and the preservation of monuments owned by a private party complying with a contract. The Ancient Monument and Archaeological Sites and Remain Act of 1958 contain provisions that will aid in carrying with the Mission's objectives, since thousands of monuments are either privately owned or unprotected.¹¹

4. ROLE OF INDIAN JUDICIARY

The judiciary in India plays a crucial role in the protection of archaeological monuments and sites through various key aspects as highlighted in the provided sources:

- The judiciary interprets laws like the Ancient Monuments and Archaeological Sites and Remains (AMASR) Act, 1958 to ensure the protection and preservation of archaeological and historical monuments and sites.¹²
- Courts enforce regulations to prevent encroachments and illegal constructions near monuments, ensuring the sanctity of these sites.
- Courts intervene to safeguard monuments from damage or danger, as seen in cases like Hotel Jawahar International Pvt Ltd vs Archaeological Survey of India and Maharana Pratap Residence Welfare Association C Block vs. Union of India.
- The judiciary actively protects the heritage of the country by interpreting laws, making distinctions, and safeguarding monuments across different High Courts in India.

⁹ Ramya B Senthil, "Heritage Conservation Plans of India - Quantity vs Quality Angst's", 6 *IJSR* (July-2017).

¹⁰ The Ancient Monuments and Archaeological Sites and Remains Act, 1958, No. 24, Acts of Parliament, 1958, (India).

¹¹ Supra Note 3.

¹² Supra Note 2.

- The judiciary's role includes reviewing the list of ASI-protected monuments, standardizing the inclusion and exclusion of sites, and ensuring the preservation of monuments of national importance.
- Proposed amendments involve expert monument committees to rationalize prohibited and regulated areas around monuments, ensuring a systematic approach to protection.
- Courts have made significant legal pronouncements, such as interpreting rules like Rule 10 of AMASR Rules, 1959, and upholding reasonable restrictions for the protection of monuments and heritage sites.¹³

In summary, the judiciary in India actively interprets and enforces laws, intervenes to prevent damage, preserves heritage, reviews monument lists, and makes legal pronouncements to protect archaeological monuments and sites, ensuring the conservation of the country's rich historical and cultural heritage.

Through a number of Public Interest Litigations in various circumstances, State High Courts and the Supreme Court have also taken up the matter of monument protection and prevention.

In *K. Guruprasad Rao v. State of Karnataka and Ors.*¹⁴, The Court ruled that preservation of historic sites must always come first when pursuing development projects. A balance must be struck between the potential benefits of mining and other development-related activities and the necessity to safeguard the protection and preservation of ancient sites for the benefit of future generations. Although the State and the leaseholders stand to gain financially from mining operations, the temple gives a wealth of information that is incredibly valuable culturally and historically, every effort must be taken to preserve the legacy. Additionally, an expert committee or group must be appointed by the Indian government to assess the effects of mining on the monuments designated as protected monuments by the 1958 Act and implement any necessary corrective action.

In *M C Mehta v. Union of India*¹⁵ this case is also known as “*Taj Corridor Scam Case*”. The Supreme Court has considered Article 49 of the Indian Constitution when considering this Public Interest Litigation against the Taj Heritage Corridor Project of the Uttar Pradesh government. The Uttar Pradesh government started a project called the Taj Heritage Corridor Project. One of the primary goals of the project was to reroute the Yamuna River and recover

¹³ Shiv Shankar Banerjee, Legal Framework on Indian Heritage, (Feb. 20, 2024, 10:04 AM), <https://legaleagleweb.com/articalsdetail.aspx?newsid=15>

¹⁴ *K. Guruprasad Rao v State of Karnataka and Ors*, Civil Appeal No.4823 (Arising out of SLP(C) No.20180 of 2010) decided on July 1st, 2013. (India). (Judgment was given by a Bench comprising of Hon'ble Justice G.S. Singhvi and Justice Ranjana Prakash Desai)

¹⁵ *M C Mehta v Union of India*, 2007 (1) SCC 110 (India). (Judgment was delivered by a Bench comprising of Hon'ble Justice S.B. Sinha, Justice S.H. Kapadia, Justice D.K. Jain).

75 acres of land between the Taj Mahal and Agra Fort, which would then be used to build shopping centers, food plazas, and entertainment venues. This Court was made aware of the aforementioned actions taken by the Uttar Pradesh government. A deviation from that rule was made. The Central Bureau of Investigation (CBI) was instructed to conduct a thorough investigation. In its judgment dated September 18, 2003, this Court instructed the CBI to register a First Information Report and conduct additional legal inquiry after reviewing the report that was presented to it. CBI inquired into the situation. In the exercise of its jurisdiction under Article 32 of the Indian Constitution, and in light of Article 49 and clause (g) of Article 51A of the Indian Constitution, this Court rejected the application in the course of hearing the public interest litigation and determined that the building of food plazas, stores, and entertainment venues close to the Taj should be discontinued.

*M C Mehta v. Union of India*¹⁶ (*Taj Trapezium Case*), In the present case, the Taj is in danger of degradation and damage due to a combination of classic decay-causing factors and evolving social and economic circumstances that worsen the problem. The Taj Mahal, an internationally recognized monument, is deteriorating as a result of air pollution. In 1984, M.C. Mehta, a public interest counsel and environmentalist, filed a suit on behalf of the public before the Supreme Court due to the Taj Mahal's deterioration. The petitioner petitioned the appropriate authorities for the appropriate instructions to take prompt action to prevent air pollution in the Taj Trapezium Zone and preserve the Taj Mahal. A Division Bench delivered its final decision on December 30, 1996. The Court ordered that any industry that is unable to obtain a gas connection or that does not want one may apply to the Corporation or the Government in advance for the allotment of substitute plots in the industrial estates outside of the Taj Trapezium Zone.

In *Vishwanath Pratap Singh v. Union of India*,¹⁷ A public interest lawsuit against the Delhi Development Authority officers club's building on property within 100 meters of Siri Fort Wall was decided by the Delhi High Court. The Siri Fort Wall marks the only area in Asia and Europe where the Mongols were truly routed and forced to retreat in complete disgrace. The wall's stones carry an inscribed epic history of our nation's victory. The Court entertained the Public Interest Litigation and held that the construction is in violation of the 1992 notification that forbade construction activity in 100 meters of area and regulated 200 meters of protected monuments. The Court took this ruling into consideration in light of Article 49 of the Indian Constitution, Schedule VII

¹⁶ *M C Mehta v Union of India*, (1997) 2 SCC 353, (India). (Judgment was delivered by a Division Bench comprising of Hon'ble Justice Kuldip Singh and Justice Faizan Uddin)

¹⁷ *Vishwanath Pratap Singh v Union of India*, MANU/DE/1490/2002, (India). (Judgment was delivered by a Division Bench comprising of Hon'ble Justice S. Sinha, and Justice A. K. Sikri)

division of powers, the Ancient Monuments and Archaeological Sites and Remains Act, 1958, and the Ancient Monuments Preservation Act, 1904.

In *Dr. Chandrika Prasad Yadav v. Union of India*,¹⁸ The Mauryan Empire is represented by the ancient site and archeological remnants at Kumrahar, an area in Patna. The other is the new unearthed Mira Bigha site in Jahanabad, which is revealing archeological treasures. The idol seekers are committing an avalanche of theft and stealing at the Mira Bigha site. Such places of historic heritage are required to be fenced off under the Ancient Monuments and Archaeological Sites and Remains Act, 1958, with determination and without assistance. The areas that are next to and contiguous to these sites must be designated as regulated, prohibited, protected areas. It is held that these places need to be cleansed in order to safeguard historical sites and archaeological monuments. As mandated by the 1958 Act, the archeological Officer and each District Magistrate whose territory contains such archeological sites have a personal, moral, and constitutional duty to protect these sites.

In *Re Preservation of Antiquities involved in Criminal Trials v. High Court of Orissa*¹⁹, Based on a report provided by the court's registrar, the Orissa High Court took a suo-moto action in this case about precious antiques located in State malkhanas that are the subject of criminal proceedings. Long after the trials were ended, stone and metal sculptures remained unclaimed and lying about the state's malkhanas. Regarding the preservation of antiquities related to criminal trials, the court ordered that these artifacts be given to the state museum so that proper preservation could be taken of them and interested scholars and historians may conduct research. It had been ordered that the state museum classify the artifacts as "antiquities involved in judicial proceedings court's property" and display them separately. The court decided that further into the future, judicial officers will oversee the proper handling of antiquities to the state museum.

In *Emca Constructions Company v. Archaeological Survey of India & Ors.*²⁰, The appellant took issue with an interim order made by a learned Single Judge that instructed the parties to keep things as they were regarding construction on property that was located within a prohibited distance of a squarely protected monument. This order was an issue of consideration. The court considered the expert advisory committee's report and the ex post facto permit that was granted, as well as the buildings that were built within the

¹⁸ *Dr. Chandrika Prasad Yadav v. Union of India*, 2004 (1) BLJR 633, (India). (Judgment was delivered by a Bench comprising of Hon'ble Justice R. Dhavan and Justice N Sinha)

¹⁹ *Re Preservation of Antiquities involved in Criminal Trials v. High Court of Orissa*, AIR 1999 ORI 53, (India). (Judgment was delivered by a Bench comprising of Hon'ble Justice S.N. Phukan and Justice A. Pasayat)

²⁰ *Emca Constructions Company v. Archaeological Survey of India & Ors*, 164 (2009) DLT 515, (India). (Judgment was delivered by Hon'ble Justice S. Muralidhar)

forbidden distance from the squarely protected monument. The Archaeological Survey of India was then instructed by the Court, acting through its DG, to immediately cease accepting and processing any applications for permission to construct or renovate any building in an area that is prohibited, as well as to stop accepting appeals against any orders that may have been issued rejecting such permissions. Additionally, the Archaeological Survey of India was instructed to reconsider all permissions granted as a result of the Committee's establishment and take appropriate action after providing affected parties with a chance to be heard.

*Archaeological Survey of India v. State of M.P. and Others*²¹, two writs Petitions, both in the nature of Public interest litigation came to be filed in the High court of Madhya Pradesh, Principal Seat at Jabalpur. In one petition Archaeological Survey of India was the petitioner. Other petition was filed by Mr. Mohammed Azam Khan claiming himself to be a public spirited person. They were concerned with the Jain temples which were constructed sometime in 6-7th century A.D. and scattered over an area of 199.45 acres in villages Kundalpur, Fatepur and Teergarh in Tehsil hata, District Damoh (MP). This cluster of temples include most famous among them known as the temple of 'Bade Baba'. According to the Petitioners, even when they are protected ancient monuments under The Ancient Monuments and Archaeological Sites and Remains Act, 1958 and rules 1959 framed there under, Jain Temple Trust is carrying out illegal construction and thereby vandalizing the said Bade Baba Jain Temple. Both these writ petitions are disposed of by the High Court holding that the original temple which was declared to be an ancient monument by virtue of notification issued under Section 3 of Ancient Monument Protection Act, 1904 does not survive and the idol of Bade Baba, which is an ancient monument, alone survives. The court issued the direction to the trust to submit an application for grant of permission to raise construction of the temple to preserve and protect idol of "Bade Baba" and a further direction was issued to the state government to consider that application in accordance with law within a period of 2 months.

In *Archaeological Survey of India v. Narender Anand and Others*,²² the Supreme Court of India ruled that the 100-meter distance specified by the Ancient Monuments and Archaeological Sites and Remains Act, 1958 must be measured from the outer boundary wall of the relevant monuments rather than the monument's actual physical structure.

²¹ *Archaeological Survey of India v. State of M.P. and Others*, (2014) 8 AD (SC) 92 : AIR 2014 SC 2789 : (2014) 2 MPJR 85 : (2014) 7 SCALE 29, (India).

²² *Archaeological Survey of India v. Narender Anand and Others*, 2012 (2) SCC 562, (India). (Judgment was delivered by a Bench comprising of Hon'ble Justice G.S. Singhvi and Justice Asok Kumar Ganguly)

Secretary and Curator, Victoria Memorial Hall v. Howarh Ganatantrik Nagrik Samity,²³ In this particular case, the Supreme Court of India has recognized and established a new category of monument known as a “Historical Monument.” A new test has been formulated by the Supreme Court for permitting the construction within the Victoria Memorial Hall complex. The court in this case focused on the issue of whether allowing such development could compromise or otherwise interfere with the monuments' ability to be preserved and protected. In this instance, the court is utilizing its judicial power to preserve the aesthetic appeal of Victoria Memorial Hall, which the Supreme Court has designated as a “Historical Monument.” However, there is no mention of the monument's national significance or its protection under the Indian Constitution or the Ancient Monuments and Archaeological Sites and Remains Act, 1958.

*Wasim Ahmad Saeed v. Union of India*²⁴ In the present case, the concern is with the movie being filmed inside the dargah and mosque at Fatehpur Sikri, which is a protected site for which the Archaeological Survey of India has given permission. The Archaeological Survey of India should not grant any permission for any activity unrelated to the operations of the jama Masjid or Dargah, according to a decision by the Supreme Court. The court also issued guidelines for possible alternate locations for the monument's store owners.

In Sri Y. V. Satyarayana v. The Deputy Commissioner,²⁵ JUDGE: G.NARENDAR the issue is regarding the maladministration of temples in the state of Andhra Pradesh. The case highlighted the manner in which temples in the state were subjected to maladministration, and their limited resources were squeezed by interested persons, particularly the so called secular employees. Sri Venkateswara Swami Temple, Karimnagar Town, had the cadre strength of one Junior Assistant, one night Watchman, and one Attender. The learned AGA submits that under the Karnataka Ancient and Historical Monuments and Archaeological Sites and Remains Act 1961, the Deputy Commissioner is the competent Authority to initiate action for removal of the any building for enforcing restrictions and for protection of the core area. Hence, it is submitted that the Authority be permitted to withdraw the present notification with liberty to initiate proceedings in accordance with law after notice to the petitioner. The said submission of learned AGA is placed on record. In the light of submissions placed on record, the respondent is permitted to withdraw the notice to the writ petition. However, withdrawal of notification or communication by the

²³ *Secretary and Curator, Victoria Memorial Hall v. Howarh Ganatantrik Nagrik Samity*, 2010 (3) SCC 732, (India). (Judgment was delivered by a Bench comprising of Hon'ble Justice K.G. Balakrishnan, Justice Deepak Verma, Justice B.S. Chauhan)

²⁴ *Wasim Ahmad Saeed v. Union of India*, 1997 (5) SCALE 451, (India). (Judgment was delivered by a Bench comprising of Hon'ble Justice B.N. Kirpal, Justice R.C. Lahoti, Justice K.G. Balakrishnan)

²⁵ *Sri Y. V. Satyarayana v. The Deputy Commissioner*, WP 22180/2017, (India).

respondent would not restrain the competent Authority from initiating appropriate proceedings, in accordance with the provisions of law under the Act, if they find that the act of the petitioner or any other similarly situated persons is violating of the provisions of the Act. It is made clear that while initiating such proceedings i.e., issuing of show cause notice or initiating action against the erring persons, shall be made after affording a hearing to them. With the above observations the writ petition stands dismissed.

In *Biji Rajesh v. Competent Authority & Ors*²⁶, Hon'ble Judges : Dhirubhai Naranbhai Patel, CJ;C. Hari Shankar, J, In the facts of the present case, the respondents have sought permission for repair and renovation in the existing building which is situated at Nizamuddin East, New Delhi. The appellant (original petitioner) filed a writ petition for the reason that nearby the property of respondents, there is a declared ancient monument, Humayun Tomb at Delhi. The aforesaid property of the respondents which requires renovation or repair, for which even permission has also been granted by the Competent Respondent Authorities under Section 20C of the Ancient Monuments and Archaeological Sites and Remains Act, 1958. Being aggrieved and dissatisfied with the aforesaid permission, granted by the Competent Respondent Authorities to respondents, writ petition was preferred by this appellant being which was disposed of by the learned Single Judge vide judgment and order dated 11th December, 2019. Being aggrieved and dissatisfied with the aforesaid judgment and order dated 11th December, 2019, this appeal has been preferred by the original petitioner. Having heard the appellant in person and learned counsel for the respondents and looking to the facts and circumstances of the case, it appears that the property of the respondents is situated within the radius of 100 meters from the ancient monument, Humayun Tomb, situated in the city of Delhi. It further appears from the facts of the case that necessary permission was sought by respondents under Section 20C of the Act of 1958.²⁷ In view of the aforesaid provisions of the Act, 1958, read with the permission sought for by the respondents and read with the permission granted by respondents dated

²⁶ *Biji Rajesh v. Competent Authority & Ors*, (2020) 01 DEL CK 0247, (India).

²⁷ Section 20C of The Ancient Monuments and Archaeological Sites and Remains Act, 1958, No. 24, Acts of Parliament, 1958, (India), reads as under: "20C. Application for repair or renovation in prohibited area, or construction or re-construction or repair or renovation in regulated area.--(1) Any person, who owns any building or structure, which existed in a prohibited area before the 16th day of June, 1992, or, which had been subsequently constructed with the approval of the Director-General and desires to carry out any repair or renovation of such building or structure, may make an application to the competent authority for carrying out such repair or renovation, as the case may be. (2) Any person, who owns or possesses any building or structure or land in any regulated area, and desires to carry out any construction or re-construction or repair or renovation of such building or structure on such land, as the case may be, may make an application to the competent authority for carrying out construction or re-construction or repair or renovation, as the case may be."

13th March, 2018, it cannot be said that there is any violation of the provisions of the Act, 1958 by the respondents. Looking to Section 20A of the Act of 1958, what is prohibited under this Section is construction and what is excluded is repair and renovation. In the property in question the repair and renovation is always permitted with the permission of the competent authority under Section 20C of the Act, 1958. Hence, there is no substance in this LPA and the same is therefore dismissed.²⁸

After the analysis of the above mentioned cases the researchers found that The Supreme Court and various High Courts of the Country have significantly contributed to the Preservation, Conservation and Protection of the Cultural Heritage of the Country. The Preservation of National Heritage is a constitutional mandate which has been considered with the enactments made by the Parliament as well as judicial interpretation. But, the number of Public Interest Litigations 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 role of judiciary in protection of physical existence of monuments is clearly seen in many cases. After the examination of the judgments of various courts regarding the issue of protection and conservation of monuments under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and the Constitution of India, shows that although in many cases issues related to these monuments were raised but there is need for more awareness regarding this. The approach of the judiciary when dealing with cases of the protection of archeological monuments and sites should be strict. Strict guidelines should be implemented for the purpose of protection of the monuments and sites. The Courts have encouraged public participation and activism in the preservation of archaeological sites, emphasizing the collective responsibility to protect and cherish the nation's cultural legacy. The judiciary has intervened as and when required for the protection of monuments, heritage buildings, and archaeological sites.

5. CONCLUSION AND SUGGESTIONS

A constitutional duty that has been taken into consideration with parliamentary enactments and judicial interpretation is the preservation of national heritage. However, compared to the richness of our heritage, there are not as many Public Interest Litigations involving historic issues. The reasons probably are the low level of public awareness and the less number of NGOs in this field. The role of judiciary in protection of physical existence of monuments is clearly seen in many cases. Even though concerns about these monuments were brought up frequently, there is still a need for greater awareness of this, according to an analysis of court rulings pertaining to the preservation and protection of monuments under the Ancient Monuments and Archaeological Sites and

²⁸ <https://indiankanoon.org/doc/176741768/>

Remains Act, 1958 and the Indian Constitution. The judiciary should take a strict approach in matters involving the preservation of archaeological monuments and sites. Strict guidelines should be implemented for the purpose of protection of the monuments and sites. Based on the aforementioned findings, the following suggestions are made:

- **Enforcement of Existing Laws:** The judiciary plays a crucial role in enforcing existing laws related to the protection of archaeological sites. Through the enforcement of laws such as the Ancient Monuments and Archaeological Sites and Remains Act, the courts are able to control any unapproved construction, excavation, or other activity that could endanger these sites.
- **Legal Oversight:** In order to make sure that government organizations like the archeological Survey of India (ASI) and other parties are carrying out their duties in protecting archeological monuments, the judiciary could provide oversight through the courts. This includes maintaining a check on the execution of legally required conservation and preservation initiatives.
- **Resolution of Disputes:** The judiciary can step in to settle disagreements over the preservation of historical monuments and make sure that judgments are made with the best interests of maintaining these ancient sites in consideration. This can involve adjudicating on issues related to encroachments, unauthorized activities, or disputes over ownership or conservation methods.
- **Setting Precedents:** The judiciary has the power to create precedents that clearly define rules for the preservation of archaeological monuments and sites through significant rulings and legal interpretations. These legal precedents can guide future cases and ensure consistent protection of cultural heritage across the country.
- **Public Awareness:** In order to increase public awareness of the significance of protecting archeological sites, the judiciary can also be involved. By highlighting the legal significance of these monuments and the consequences of their destruction or neglect, the judiciary can contribute to fostering a culture of respect and protection towards India's rich cultural heritage.²⁹

²⁹ Rakesh Ishi, "AMASR-Protection and Preservation of India's cultural heritage", (April,12, 2023, 11:20 AM), https://taxguru.in/corporate-law/amasr-protection-preservation-indias-cultural-heritage.html#google_vignette

REFERENCES

- Arnab Gantait, Priyakrushna Ushna Mohanty and G. Anjaneya Swamy, “*Conservation and Management of Indian Built Heritages: Exploring the Issues and Challenges*”, 11 *SAJTH* (January 2018).
- Dr. J. N. Pandey, “CONSTITUTIONAL LAW OF INDIAN”, 453-477 (Central Law Agency, Allahabad, 54th edition, 2017)
- Dr. krishan Mahajan, "*Legally Victimising National Monuments: Role of Parliament, Union Government & Supreme Court*", 1-378 (Notion Press Publishing Company, 2018). available at: https://books.google.co.in/books/about/Legally_Victimising_National_Monuments.html?id=HdVdDwAAQBAJ&redir_esc=y
- Dr. S. Praveen Kumar, “*Monuments for the Development of Tourism*”, 11 *IJMSSR* 87-94 (Oct 2014).
- Ehtesham Patel, “*Conservation of Heritage Sites in India*”, 6 *IJEAT* 5 (June 2017).
- Hashmi, A.A, “*Inventory of Monuments And Sites of National Importance*”, 1-242 (The Director General, Archaeological Survey of India, Govt. of India, New Delhi, Vol. 1, part 3, 2004).
- Henry cleere, “*Approaches to the Archaeological Heritage*”, 1-138 (Cambridge University Press, Cambridge, England, 1984), available at: https://books.google.co.in/books?id=dhk9AAAIAAJ&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false (Feb, 12, 2024, 11:00 AM).
- Jagat pati joshi, Krishna devi, et.al., “*Inventory of Monuments And Sites of National Importance*”, 1-189 (The Director General, Archaeological Survey of India, Govt. of India, New Delhi. Vol. 1, part 2. 1999).
- Kanya Saluja , Conservation and protection of heritage monuments in India, available at: <https://blog.ipleaders.in/conservation-protection-heritage-monuments-india/>
- M.P. Jain, “*Indian Constitutional Law*”, (Lexis Nexis, eighth edition, 2018).
- Michael Falser and Monica Juneja, “*Archaeologizing' Heritage?: Transcultural Entanglements between Local Social Practices and Global Virtual Realities*”, 1-287 (Springer Science & Business Media, ISBN 3642358705, 2013).
- Nayanjot Lahiri, “*Monuments Matter: India's Archaeological Heritage Since Independence*”, 1-132 (Marg's Quarterly Publications Mumbai, India Vol. 68, Issue 4, 2017).
- Rakesh Ishi, “AMASR-Protection and Preservation of India’s cultural heritage”, (April, 12, 2024), available at:

https://taxguru.in/corporate-law/amasr-protection-preservation-indias-cultural-heritage.html#google_vignette

- Ramya B Senthil, “*Heritage Conservation Plans of India - Quantity vs Quality Angst’s*”, 6 *IJSR* (July-2017).
- Shiv Shankar Banerjee, Legal Framework on Indian Heritage, (Feb. 20, 2024), available at: <https://legaleagleweb.com/articalsdetail.aspx?newsid=15>
- Sipra Mitra, Anil Grover, et.al., “*Conservation of Heritage Buildings - A Guide*” 1-88 (Directorate General, Central Public Works Department, 101 A, Nirman Bhawan, New Delhi – 110011, 2013).
- V. N. Shukla, “*Constitution of India*”, 370-393 (Eastern Book Company, Lucknow, Thirteenth edition, 2017)