

THE NATIONAL COMMISSION FOR HERITAGE SITES BILL, 2009

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The National Commission for Heritage Sites Bill, 2009 seeks to constitute a National Commission for Heritage Sites to give effect to UNESCO World Heritage Convention, 1972. India ratified the Convention in 1977. The Bill was introduced in the Rajya Sabha on February 26, 2009. The Bill was referred to the Department-related Standing Committee on Transport, Tourism and Culture on September 2, 2009. The Standing Committee is scheduled to submit its report within three months.

I. HIGHLIGHTS OF THE BILL

The National Commission for Heritage Sites Bill, 2009 seeks to constitute a National Commission for Heritage Sites to give effect to UNESCO Convention, 1972. India ratified the Convention in 1977. The central government may notify heritage sites and enter the description of these sites in a heritage sites roster. The Commission shall maintain the roster.

The functions of the Commission include (i) recommending policies with respect to conservation, protection, and management of heritage sites; (ii) laying down standards for the development of scientific and technical institutions and courses; and (iii) creating guidelines for conservation and management of heritage sites. The Commission may issue directions to any person who is the owner or controls a heritage site to provide access to such site for its maintenance. The person may be directed to not endanger or damage the site. Any person who fails to comply will be subject to a fine of up to Rs 10 lakh.

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II. KEY ISSUES AND ANALYSIS

1. While the Bill has new definitions in line with the UNESCO Convention, the definitions in the existing laws which protect monuments have not been amended. The Bill combined with existing Acts do not fully conform to the provisions related to conservation under the UNESCO Convention.
2. With one exception – of the power to direct owners of sites to permit access and related penalties – the functions of the Commission do not need legislative backing. An alternate formulation to the Bill is to set up the Commission through notification, and to amend existing laws to provide for penalties and directions.
3. The Bill creates a national roster for heritage sites of national importance, to be maintained by the Commission. The National Mission on Monuments and Antiquities was set up in 2007 with a five-year term to prepare a national register of built heritage, sites and antiquities. The Commission's work partly duplicates this initiative.
4. Both the Preamble of the Bill as well as the Statement of Objects and Reasons mention that the Bill seeks to fulfill India's obligations under the 1972 UNESCO Convention. However, many of the obligations are not addressed by the Bill.

III. CONTEXT

The Constitution directs the state and citizens to protect and preserve India's heritage.¹ Cultural heritage is protected by three central laws: the Ancient Monuments and Archaeological Sites and Remains Act, 1958; the Ancient Monuments Preservation Act, 1904; and the Indian Treasure Trove Act, 1878. The natural heritage sites are protected by the Environment (Protection) Act, 1986 and the Biological Diversity Act, 2002. The states have laws to conserve and protect heritage under their purview.² Many Urban and Regional Planning and Development Acts have

¹ INDIA CONST. art. 49 & art. 51A(f).

² See, Orissa Ancient Monuments and Preservation Act, 1956; Rajasthan Monuments, Archaeological Sites and Antiquities Act, 1961; Victoria Memorial Act, 1903; Salar Jung Museum Act, 1961.

provisions for identifying “special areas/town planning schemes/local area plans which are used to regulate activities around heritage sites.”³

The Archaeological Survey of India (ASI) maintains 3,667 ancient monuments, archaeological sites and remains of national importance. Besides these, the state governments protect 3,573 monuments.⁴ A large number of monuments and sites are unprotected by either ASI or state governments. However, there is no comprehensive list of these sites in India.⁵ In 1977, India ratified the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972, which makes it necessary for India to take measures to identify, protect and conserve its cultural and natural heritage.⁵ Indian laws only define “ancient monument”, “protected monument” and “antiquity” while the UNESCO’s definition for “cultural heritage” covers a wider range of items such as industrial heritage, cultural routes, landscapes, etc.

The National Commission for Heritage Sites Bill, 2009 seeks to (a) create a national register of heritage sites; (b) include definitions of “cultural heritage” and “natural heritage”; and (c) establish a National Commission for Heritage Sites.

A. Constitution of the Commission

“Cultural heritage” is defined as (i) monuments, architectural works, and monumental elements of archaeological nature; (ii) buildings with historical, aesthetic, ethnological, or anthropological background; and (iii) sites including works of man or combined works of nature and man with historical, aesthetic, ethnological, or anthropological background⁶. “Natural heritage” is defined as (i) natural sites or delineated areas which are relevant to science, conservation, or natural

³ MINISTRY OF URBAN DEVELOPMENT & MINISTRY OF HOUSING AND URBAN POVERTY ALLEVIATION, A SUPPLEMENT TO TOOLKIT ON FORMULATION OF CITY DEVELOPMENT PLAN: FOCUS ON HERITAGE (2006) available at http://www.prsindia.org/uploads/media/1237548287/JNNURM_heritage_toolkit.pdf

⁴ “Protection of Monuments,” Ministry of Tourism and Culture, Press Information Bureau, Dec 4, 2007.

⁵ “India: Ratified Conventions, Legal Instruments;” UNESCO (see http://portal.unesco.org/la/conventions_by_country.asp?contr=IN&language=E&typeconv=1).

⁶ The National Commission for Heritage Sites Bill, 2009 § 2(c)i.

beauty; (ii) geological or physiological formations which constitute the habitat of threatened species of animals and plants of outstanding value to science or conservation; and (iii) natural features consisting of physical and biological formation⁷.

The central government shall constitute a National Commission for Heritage Sites. "Heritage site" is defined as a cultural heritage site, a natural heritage site, a mixed cultural and natural heritage site or a cultural landscape of outstanding value⁸. The Bill defines "outstanding value" as a heritage site which is "so exceptional that it transcends the boundaries of the place it is located" and is of importance to present and future generations⁹. "Cultural landscape" includes cultural properties that represent the combined works of man and nature and illustrate the evolution of human society¹⁰. The central government shall appoint a member secretary, chairperson and seven members to the Commission¹¹. Its composition shall be as prescribed.

B. Power and Functions of the Commission

The central government may notify heritage sites and enter the description of these sites in a heritage sites roster¹². The Commission shall maintain the roster¹³. The Commission may issue directions to any person who is the owner or controls a heritage site to provide access to such site for its maintenance¹⁴. The person may be directed to not act in a way that endangers or damages the site. Any person who fails to comply will be subject to a fine of up to Rs 10 lakh¹⁵. The Commission shall authorize a person of the rank of Under Secretary to file a complaint in this regard¹⁶. The Commission shall be bound by directions from the government except those that relate to technical and administrative matters¹⁷. The decision of

⁷ *Id.* § 2(c)ii.

⁸ *Id.* § 2(c).

⁹ *Id.* § 2(c)(v).

¹⁰ *Id.* § 2(c)(iv).

¹¹ *Id.* § 5.

¹² *Id.* § 3.

¹³ *Id.*

¹⁴ *Id.* § 17.

¹⁵ *Id.* § 17(2).

¹⁶ *Id.* § 17(3).

¹⁷ *Id.* § 21(1).

the central government shall be final¹⁸.

Other functions of the Commission include (i) recommending policies to the government with respect to conservation, protection, and management of heritage sites; (ii) laying down standards for the development of scientific and technical institutions and courses; (iii) creating guidelines for conservation and management of heritage sites; (iv) conducting research to identify heritage sites; (v) recommending measures for conserving and integrating intangible cultural systems with conservation of heritage sites; (vi) publishing heritages maps; and (vii) preparing a list of heritage sites for nomination to the World Heritage Sites list¹⁹.

IV. PURPOSE OF THE BILL

Both the Preamble of the Bill as well as the Statement of Objects and Reasons mention that the Bill seeks to fulfill India's obligations under the 1972 UNESCO Convention. The Bill has three broad provisions. First, the Bill defines "heritage site" in consonance with the 1972 UNESCO Convention. The Bill however does not lay down provisions for conservation of heritage sites. The existing Acts which actually lay down provisions for protection and conservation of monuments only define "ancient monument"²⁰, "protected monument"²¹, "antiquity"²² and "treasure"²³. Thus, neither the Bill nor the existing Acts fully conform to the provisions related to conservation under the UNESCO Convention.

Second, the Bill establishes a National Commission for Heritage Sites. The functions are mainly recommendatory (which do not need legislative authorization), with one exception. The Commission may direct owners of heritage sites to make these accessible for maintenance, and

¹⁸ *Id.* § 21(2).

¹⁹ *Id.* § 16.

²⁰ The Ancient Monuments and Archaeological Sites and Remains Act, 1958 § 2(a); The Ancient Monuments Preservation Act, 1904 § 2(1).

²¹ The Ancient Monuments and Archaeological Sites and Remains Act, 1958 § 2(j); The Ancient Monuments Preservation Act, 1904 § 3.

²² Antiquities and Art Treasures Act, 1972 § 2(1)(a); The Ancient Monuments and Archaeological Sites and Remains Act, 1958 § 2(b); The Ancient Monuments Preservation Act, 1904 § 2(2).

²³ The Indian Treasure Trove Act, 1878 § 3.

levy fines if they do not do so. An alternative formulation could be to set up a recommendatory commission through a notification, and amend existing Acts for penalties and directions. It may be useful to evaluate the costs and benefits of these two alternatives.

Third, the Bill creates a national roster for heritage sites of national importance, which shall be maintained by the Commission. The National Mission on Monuments and Antiquities was set up in 2007 with a five-year term to prepare a national register of built heritage, sites and antiquities. The Commission's work partly duplicates this initiative. Table 1 compares these provisions with the existing system.

TABLE 1: COMPARISON OF THE 2009 BILL WITH THE EXISTING FRAMEWORK FOR HERITAGE CONSERVATION

2009 BILL	EXISTING FRAMEWORK	REMARKS
Defines "heritage site"; "cultural heritage site"; "natural heritage site"; and "outstanding value"	1958 Act and 1878 Act define "ancient monument", "protected monument", "antiquity" and "treasure" and lay down provisions for their protection and conservation.	The definitions in the existing Acts have not been amended to bring them in line with the Bill's definition. In effect there is no change in the way sites are currently protected.
Sets up a Commission to recommend policies and guidelines for heritage sites.	ASI and state archaeological departments are responsible for protection and conservation of cultural heritage sites. Ministry of Environment and Forests is responsible for protection of natural heritage sites.	(a) Other than the power to issue directions and levy a fine on owners of heritage sites, the Commission can only recommend policies and guidelines. The need for a separate legislation to create a Commission is not clear since it could be

		<p>achieved through a notification.</p> <p>(b) Under the Bill, ASI and other bodies responsible for conservation would continue to undertake the actual conservation. Various committees have criticised them for lack of human resources, outdated parameters of protection without involving local communities, inadequate institutional coordination, encroachment of heritage precincts, etc.</p>
Identify and notify a roster of heritage sites of national importance	The National Mission on Monuments and Antiquities was launched in 2007 under ASI to prepare a national register of built heritage, sites and antiquities.	The function of the Commission overlaps with that of the National Mission. It is not clear why a separate roster is required since the same could be achieved by broadening the mandate of the Mission.

Sources: The National Commission for Heritage Sites Bill, 2009; The Ancient Monuments and Archaeological Sites and Remains Act, 1958; The Indian Treasure Trove Act, 1878; Department-related Parliamentary Standing Committee on Transport, Tourism and Culture, 91st report on the Functioning of the Archaeological Survey of India, Nov 25, 2005; The Taskforce for Creative and Cultural Industries, The Planning Commission, Govt of India, May 25, 2005 to May 26, 2006; National Mission on Monuments and Antiquities, "Archaeological Survey of India; PRS.

The Bill also falls short of fulfilling some of the objects mentioned in the Statement of Objects and Reasons (SOR). First, the SOR states that there is a “need to encompass the entire universe of heritage sites including those which are outside the scope of existing legislation.” However, the Bill only notifies and enters in the roster heritage sites of national importance. Second, the SOR states that there is a need to provide for a uniform legislative framework and practices in the area. However, the Commission only has recommendatory power with regard to central and state governments.

**TABLE 2: COMPARISON OF THE 1972
UNESCO CONVENTION AND THE BILL**

1972 UNESCO CONVENTION	PROVISIONS IN THE BILL	Remarks
Each member state has to identify and delineate the different “cultural heritage” and “natural heritage” situated on its territory.	Heritage sites of national importance are to be notified and entered in the national roster.	Heritage sites that are not classified as being of national importance will not be notified.
It is primarily the duty of each member state to ensure the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage on its territory.	Constitute National Commission for Heritage Sites who can only formulate guidelines for protection and conservation of heritage sites. The Commission may issue directions to an owner of a heritage site to provide access to the site for its	The actual work of protection and conservation is not covered in the Bill It is not mandatory for owners of heritage sites to protect and conserve such sites.

	<p>maintenance and preservation or desist from doing any act which is likely to damage or destroy it.</p>	
<p>Each member state shall endeavour to adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmes.</p>	<p>The Commission shall recommend to the central and state governments policies in respect of conservation, protection and management of heritage sites.</p>	<p>There is no explicit provision to integrate the protection of heritage sites into comprehensive planning programmes.</p>
<p>Sources: 1972 UNESCO Convention; the National Commission for Heritage Sites Bill, 2009; PRS.</p>		

While one of the functions of the Commission is to recommend suitable measures for conserving and integrating “intangible cultural systems” with the conservation of heritage sites, it has not defined the term in the Bill.