

Bill No. XI of 2018

THE ANCIENT MONUMENTS AND ARCHAEOLOGICAL SITES AND
REMAINS (AMENDMENT) BILL, 2018

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BILL

further to amend the Ancient Monuments and Archaeological Sites and Remains Act, 1958.

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Ancient Monuments and Archaeological Sites and Remains (Amendment) Act, 2018.

Short title and commencement.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

24 of 1958. **2.** On and from the 16th day of 1992 in the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (hereinafter referred to as principal Act), in section 2—

Amendment of section 2.

(i) in clause (db) after the words "not below the rank of", the words "Superintending Archaeologist or" shall be inserted.

(ii) for clause (dc), the following shall be substituted namely:—

"(dc) 'construction' means any erection of a structure or a building, including any addition or extension thereto either vertically or horizontally, but does not include any re-construction, repair and renovation of an existing structure or building, or, construction, maintenance and cleansing of drains and drainage works and of public latrines, or private latrines within an existing house constructed prior to 16th day of June, 1992 or constructed after 16th day of June 1992 as per permission or licence granted by the Central Government or Director-General or the Competent Authority, as the case may be, urinals and similar conveniences, or, the construction and maintenance of works meant for providing supply of water for public, or, the construction or maintenance, extension, management for supply and distribution of electricity to the public or bridge over rivers, canals or drains, railway line, or, widening, or, relaying of existing roads and pathways, or, construction of roads, fly-overs, or, construction of under bridge, or, laying of piped, or, open drains to restrain river pollution, or, laying of railway line, or, creation of surface parking, or, such works fall within the overall definition of infrastructure development for the benefit of public or provision for similar facilities for public;"

Insertion of new section 3A.

3. On and from the 15th day of October, 1959, after section 3 of the principal Act, the following section shall be inserted, namely:—

Certain ancient monuments, etc. declared protected under the Ancient Monuments Preservation Act, 1904.

"3A. The ancient monuments and archaeological sites and remains, which had been declared as protected under the Ancient Monuments Preservation Act, 1904 but could not be declared protected under the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 or by section 126 of the States Reorganisations Act, 1956 to be of national importance, but are still under the care and maintenance of the Central Government, shall be deemed to be ancient monuments and historical monuments or archaeological sites and remains as if declared to be of national importance for the purpose of the principal Act:

Provided such monuments and archaeological sites and remains have not been declared protected by the States under the respective Acts."

Amendment of section 4A.

4. On and from the 16th day of June, 1992, in section 4A of the principal Act,—

(i) for sub section (1), the following shall be substituted, namely:—

"(1) The Central Government shall, in consultation with the Authority, prescribe the ancient monuments or archaeological sites and remains, declared to be of national importance as per sections 3 and 4 of the principal Act under categories 1, 2 and 3, and while placing them under each of the categories it shall have regard to the historical archaeological, architectural and artistic value and such other factors as may be relevant for the purpose of such categorisation."

(ii) in sub-section (2) for the words 'on the recommendation of the Authority', the words 'in consultation with the Authority' shall be substituted.

Insertion of new section 6A.

5. On and from the 15th day of October, 1959, after section 6 of the principal Act, the following shall be inserted, namely:—

Preservation of protected monument not covered under agreement.

6A. (1) No person, including the owner or occupier or a protected monument, not covered by any agreement signed between the Central Government and the owner or occupier, shall construct any building within the protected monument or carry out any mining, quarrying, excavating, blasting or levy any fee for entry into or any other operation of a like nature in such area or utilize such area or part thereof in any other manner without the permission of the Central Government.

(2) The Central Government may, by order, direct that any building constructed by any person, including the owner or occupier, at the protected monument or part thereof in contravention of sub-section (1) shall be removed within a specified period and, if the person refuses or fails to comply with the order, the Collector may cause the building to be removed and the person shall be liable to pay the cost of such removal.

(3) The Central Government may, by order, direct any person, including the owner or occupier, who has indulged in any of the activities in contravention of sub-section (1) to stop such activity forthwith and if he fails to comply with the order, the Collector may cause such activity to be stopped.

6. On and from the 16th day of June, 1992, in section 20A of the principal Act, or sub-section (1) the following shall be substituted, namely:—

Amendment
of section
20A.

“(1) Every area, beginning at the limit of the protected area or the protected monument, as the case may be, and extending to a distance of one hundred meters in all directions shall be prohibited area in respect of protected area or protected monument categorized by the Central Government under Category-1.

(2) Every area, beginning at the limit of protected area or protected monument, as the case may be, and extending to a distance of fifty meters in all directions shall be the prohibited area in respect of protected site or protected monument categorized by the Central Government under Category-2.

(3) Every area, beginning at the limit of protected area or protected monuments, as the case may be, and extending to a distance of twenty five meters in all directions shall be the prohibited area in respect of protected site or protected monument categorized by the Central Government under Category-3.

7. On and from the 16th day of June, 1992, in section 20B of the principal Act, after the words in respect of every ancient monument and archaeological site and remains the words irrespective of the category prescribed by the Central Government shall be inserted.

Amendment
of section
20B.

8. On and from the 16th day of June, 1992, in section 20E of the principal Act for sub-section (1) the following shall be substitute, namely:—

Amendment
of section
20E.

“(1) The competent authority, in consultation with heritage experts or registered expert heritage bodies, shall prepare heritage bye-laws in respect of each protected monument and protected area”.

9. On and from the 16th day of June, 1992, in section 20F of the principal Act, the first proviso of sub-section (3) shall be omitted.

Amendment
of section
20F.

10. On and from the 16th day of June, 1992, in section 20 I of the principal Act, in sub-sections (a) and (b) for the words ‘make recommendations the words ‘provide assistance and advice’ wherever they occurs shall be substituted.

Amendment
of section
20 I.

11. On and from the 16th day of June, 1992, for section 20K of the principal Act, the following shall be substituted, namely:—

Amendment
of section
20K.

“(20K) On ceasing to hold office, the Chairperson or whole-time member of the Authority, as the case may be, subject to the provisions of this Act, shall not accept further employment (including as consultant or expert or otherwise) in any agency or organisation of any nature mainly dealing with archaeology, country and town planning, architecture, heritage and conservation-architecture or whose matters had been before the Chairperson or such Member without the prior approval of the Central Government and in all such cases the decision of the Central Government shall be final and binding.”

12. In section 30 of the principal Act, in clause (1)—

Amendment
of section 30.

(i) in sub-clause (i) after the word ‘imperils’ the words ‘encroaches, excavates or constructs’ shall be inserted.

(ii) in sub-clause (iv) after the words 'does any act in contravention of' the words, bracket and figures 'sub-section (1) of section 6A and' shall be inserted.

Amendment
of section 39.

13. In section 39 of the principal Act, in sub-section (2) after the words 'before the commencement of this Act' the words 'or the ancient and historical monuments and archaeological sites and remains which could not be declared to be of national importance due to oversight in the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 or the Reorganisation Act, 1956 shall be inserted.

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71 of 1951.
37 of 1956.

STATEMENT OF OBJECTS AND REASONS

The Parliament had enacted the Ancient Monuments and Archaeological Sites and Remains Act, 1958 on 28th August, 1958 to provide for the preservation of ancient and historical monuments and archaeological sites and remains of national importance, for the regulation of archaeological excavations and for the protection of sculptures, carvings and other like objects after repealing the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of States Reorganisation) Act, 1951 and section 126 of the State Reorganisation Act, 1956. Subsequently, the Parliament passed an Act to further amend the Ancient Monuments and Archaeological Sites and Remains Act, 1958 on 29th March, 2010 to define prohibited area and regulated area of the protected monuments and archaeological sites, declared to be of national importance, imposing restrictions on modern constructions in the defined prohibited area and regulated area and to make provision for validation of certain actions taken by the Central Government.

As per section 2 (db) inserted by the amendment and validation Act of 2010, the functions of the competent authority could be performed only by an officer of the rank of Director or Commissioner of archaeology of the Central or State Government. This provision has made the appointment of competent authority fairly complex since the Central Government in most of the cases does not have in place officers of the rank of Director or Commissioner of archaeology and under compulsion has no option than to nominate Director of archaeology or Commissioner of the State Governments to perform the functions of competent authority. Since the Directors of archaeology or Commissioners nominated as competent authority by the Central Government are burdened with their own responsibilities the work of competent authority suffers badly.

After the amendment and validation Act of 2010 came in to force the people having built up properties in the prohibited area and regulated area of protected monuments throughout the country are facing acute problem since they cannot undertake reconstruction or additions and alterations of their houses located in the prohibited area because of blanket prohibition imposed. The problem is common to urban as well as rural areas because in a minimum area of 10.000 sq. m. of a protected monument (even if the area of protected monument is assumed as naught) nobody can carry out any construction, except repairs, irrespective of category or significance of an ancient monument or archaeological site, declared protected, which vary from a grave, small tomb, a rock-sculpture to an ancient monuments, as significant as Taj Mahal or Ajanta Caves or Red Fort. The Problem has assumed gigantic proportion because sometimes the entire village of a locality is subsumed within the prohibited area of the protected monument or archaeological site, irrespective of its historical, archaeological or architectural value.

The amendment and validation Act of 2010 does contain a provision of categorization of monuments, as per section 4A, to be undertaken on the basis of their historical, archaeological and architectural value. But, the difficulty is that the minimum distance prescribed for the prohibited area is one hundred meters where no construction activity could be undertaken, even if the area is inhabited from a period much before the monument was declared protected by the Central Government. The owners of the houses located in the prohibited area may only carry out repairs and not any addition and alteration, expansion or reconstruction even if the house has outlived its age and is likely to collapse anytime. In hilly or undulating area, the problem is much more grave because for arriving at the prohibited area, crow-fly distance from the monument is measured which in most of the cases covers an entire village or town even though the monument and the house concerned are located at different altitudes and the construction activity is not likely to affect the visibility of the monument even remotely. Further, this prohibition on construction activities has badly affected a large number of infrastructure projects relating to construction of roads, bridges, fly-overs, laying of railway lines, over-bridges and under-bridges, under-passes expansion

of railway stations, river-front development, laying of open or piped drains along the rivers to make them pollution free, etc. which are basically aimed to provide facilities to public.

There are a large number of monuments which had been protected originally under the Ancient Monuments and Preservation Act, 1904 but due to oversight some of them could not be brought under the ambit of the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 and section 126 of the State Reorganisation Act, 1956 irony is that many of such monuments are still being maintained by the Central Government in view of their historical, archaeological and artistic importance. But legally, these have lost the tag of ancient monument or archaeological sites and remains of national importance as per section 3 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 since the Acts of 1904, 1951 and 1956 have been repealed.

Section 6 of the Act of 1958 provides for agreement between the Central Government and the owner or occupier of protected monument for maintenance including restrictions on owner's rights upon use, levying fee, construction, etc. But, the bare fact is that most of the protected monuments are not covered under any agreement signed between the owner or occupier and the Central Government. In such a situation, if the owner or occupier or someone else encroaches upon, excavates or undertakes construction at the protected monument there is no direct provision in the Act of 1958 under which action could be taken by the Central Government, contrary to protected archaeological sites and remains. This is a major reason why the removal of encroachments, stopping excavations or removal of construction and alike activities at the protected monuments without the permission of Central Government is difficult.

Section 20E of the amendment and validation Act of 2010 provides for preparation of heritage bye-laws in consultation with Indian National Trust for Arts and Cultural Heritage or other notified expert heritage bodies. But, this process is so cumbersome that the Competent Authorities have not been able to prepare the heritage bye-laws of even a handful of monuments and archaeological sites and remains even after a lapse of more than seven years. The provision hence requires to be eased by authorizing the Competent Authorities to seek consultation with heritage experts and expert heritage bodies, as per convenience, to expedite the process of preparation of heritage bye-laws for each protected monument and archaeological site and remains.

The provision under section 20F debarring the officials of Archaeological Survey of India or Ministry of Culture of the Government of India or a State Government to be eligible to hold the office of Chairperson or whole-time Members, who are otherwise well conversant with the subject matter is unreasonable and discriminatory because their expertise and rich experience cannot be availed.

Further, making the person(s) who has held the post of Chairperson or whole-time Member of the Authority ineligible for five years from the date on which he ceases to hold the office for further employment (including as consultant or expert or otherwise) in any institution, agency or organization of any nature mainly dealing with archaeology, country and town planning, architecture, heritage and conservation-architecture or whose matter had been before the Chairperson or such member is not only discriminatory but a major deterrent for attracting competent persons to hold the office of Chairperson or whole time member because many of them may not wish to become ineligible for future employment as consultant or expert in any institution, agency or organization of any nature dealing with archaeology, country and town planning, architecture, heritage and conservation-architecture for five years. The provision under the section has thus been proposed for omission.

Hence this Bill.

SAMBHAJI CHHATRAPATI

FINANCIAL MEMORANDUM

The Bill, if enacted, shall not cause any financial burden on the Consolidated Fund of India since it would be possible to nominate the Superintending Archaeologists of the Archaeological Survey of India under the Central Government as competent authorities, already in place in each State.

ANNEXURE

EXTRACTS FROM THE ANCIENT MONUMENTS AND ARCHAEOLOGICAL SITES AND REMAINS
ACT, 1958

(24 OF 1958)

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2. Definitions.—In this Act, unless the context otherwise requires,—

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(db) “competent authority” means an officer not below the rank of Director of archaeology or Commissioner of archaeology of the Central or State Government or equivalent rank, specified, by notification in the Official Gazette, as the competent authority by the Central Government to perform functions under this Act:

Provided that the Central Government may, by notification in the Official Gazette, specify different competent authorities for the purpose of sections 20C, 20D and 20E;

(dc) “construction” means any erection of a structure or a building, including any addition or extension thereto either vertically or horizontally, but does not include any re-construction, repair and renovation of an existing structure or building, or, construction, maintenance and cleansing of drains and drainage works and of public latrines, urinals and similar conveniences, or, the construction and maintenance, of works meant for providing supply of water for public, or, the construction or maintenance extension, management for supply and distribution of electricity to the public or provision for similar facilities for public;]

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[4A. **Categorisation and classification in respect of ancient monuments or archaeological sites and remains declared as of national importance under sections 3 and 4.**—(1) The Central Government shall, on the recommendation of the Authority, prescribe categories in respect of ancient monuments or archaeological sites and remains declared as of national importance under sections 3 and 4, and while prescribing such categories it shall have regard to the historical, archaeological and architectural value and such other factors as may be relevant for the purpose of such categorisation.

(2) The Central Government shall, on the recommendation of the Authority, classify all the ancient monuments or archaeological sites and remains declared as of national importance under sections 3 and 4, in accordance with the categories prescribed under sub-section (1) and thereafter make the same available to the public and exhibit the same on its website and also in such other manner as it may deem fit.]

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20A. Declaration of prohibited area and carrying out public work or other works in prohibited area.—(1) Every area, beginning at the limit of the protected area or the protected monument, as the case may be, and extending to a distance of one hundred metres in all directions shall be the prohibited area in respect of such protected area or protected monument:

Provided that the Central Government may, on the recommendation of the Authority, by notification in the Official Gazette, specify an area more than one hundred metres to be the prohibited area having regard to the classification of any protected monument or protected area, as the case may be, under section 4A.

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[20B. Declaration of regulated area in respect of every protected monument.—

Every area, beginning at the limit of prohibited area in respect of every ancient monument and archaeological site and remains, declared as of national importance under sections 3 and 4 and extending to a distance of two hundred metres in all directions shall be the regulated area in respect of every ancient monument and archaeological site and remains:

Provided that the Central Government may, by notification in the Official Gazette, specify an area more than two hundred metres to be the regulated area having regard to the classification of any protected monument or protected area, as the case may be, under section 4A:

Provided further that any area near any protected monument or its adjoining area declared, during the period beginning on or after the 16th day of June, 1992 but ending before the date on which the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Bill, 2010, receives the assent of the President, as a regulated area in respect of such protected monument, shall be deemed to be the regulated area declared in respect of that protected monument in accordance with the provisions of this Act and any permission or licence granted for construction in such regulated area shall, be deemed, to have been validly granted in accordance with the provisions of this Act, as if this section had been in force at all material times.]

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20E. Heritage bye-laws.—(1) The competent authority, in consultation with Indian National Trust for Arts and Cultural Heritage, being a trust registered under the Indian Trusts Act, 1882 (2 of 1882), or such other expert heritage bodies as may be notified by the Central Government, shall prepare heritage bye-laws in respect of each protected monument and protected area.

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20-I. Functions and powers of Authority.—(1) The Authority shall exercise or discharge the following powers or functions, namely:—

(a) make recommendations to the Central Government for grading and classifying protected monuments and protected areas declared as of national importance under sections 3 and 4, before the commencement of the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010 (10 of 2010);

(b) make recommendatins to the Central Government for grading and classifying protected monuments and protected areas which may be declared after the commencement of the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010 (10 of 2010), as of national importance under section 4;

(c) oversee the working of the competent authorities;

(d) to suggest measures for implementation of the privisions of this Act;

(e) to consider the impact of large-scale developmental projects, including public projects and projects essential to the public which may be proposed in the regulated areas and make recommendations in respect thereof to the competent authority;

(f) to make recommendations to the competent authority for grant of permission.

(2) The Authority shall, for the purpose of discharging functions under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

- (b) requiring the discovery and production of documents;
- (c) any other matter which may be prescribed.

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20K. Restriction on future employment by Chairperson and members.—On ceasing to hold office, the Chairperson or whole-time member of the Authority, as the case may be, shall, subject to the provisions of this Act, be ineligible, for a period of five years from the date on which they cease to hold office, for further employment (including as consultant or expert or otherwise) in any institution, agency or organisation of any nature mainly dealing with archaeology, country and town planning, architecture, heritage and conservation-architecture or whose matters had been before the Chairperson or such member.

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30. Penalties.—(1) Whoever—

(i) destroys, removes, injures, alters, defaces, imperils or misuses a protected monument, or

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(iv) does any act in contravention of sub-section (1) of section 19,

shall be punishable with imprisonment which may extend to three months, or with [imprisonment which may extend to two years], or with [fine which may extend to one lakh rupees], or with both.

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39. Repeals and Savings.—The Ancient Monuments Preservation Act, 1904 (7 of 1904), shall cease to have effect in relation to ancient and historical monuments and archaeological sites and remains declared by or under this Act to be of national importance, except as respects things done or omitted to be done before the commencement of this Act.

RAJYA SABHA

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BILL

further to amend the Ancient Monuments and Archaeological Sites and Remains
Act, 1958

(Shri Sambhaji Chhatrapati, M.P.)