RGICS

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# RGICS LEGISLATIVE BRIEF

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## The Ancient Monuments and Archaeological Sites and Remains (Amendment) Bill, 2017

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## KEY MESSAGES

- **The proposed amendments violate Article 49 of the Constitution, which focuses on the protection of monuments of National Importance.**
- **Given the current trend towards re-writing historical facts out of textbooks there is a fear that this amendment would allow government to dilute the protection offered to certain monuments and sites belonging to a particular period or dynasty, and erase the 'physical evidence' of their contribution to India's rich architectural and cultural history**
- **The criterion of 'safety and security of general public' could be mis-used by the real estate sector to bring land banks into the market.**
- **The Bill in its current format will dilute the powers and authority of institutions, such as Archaeological Survey of India and National Monuments Authority, organizations that are mandated to protect and preserve these monuments and sites.**
- **Inclusion of Ahemadabad, in the World Heritage Cities should encourage us to have more stringent legislation and infrastructure in place to protect our heritage so that the world can appreciate more such cities and monuments across India. Instead we seem to be diluting the limited legislative cover we currently have.**

# PART I. Introduction

In May 2017, the Union Cabinet had approved the introduction of the Ancient Monuments and Archaeological Sites Remains (Amendment) Bill, 2017 (AMASR) in Parliament. The Bill has now been introduced in the Parliament during the ongoing Monsoon session. The Principal Act - The Ancient Monuments and Archaeological Sites Remains Act, 1958, was **previously amended in 2010**. According to the amendment, any permission or grant for **new construction within 100 metres in all directions (Prohibited Area) of a centrally protected monument/site was strictly prohibited.**[i] This amendment was upheld by the Supreme Court of India.[ii] Additionally, a **'Regulated Area' was instituted within 200 metres beyond the prohibited area**. The construction work in this Regulated Area was subject to special permission from the National Monuments Authority (NMA).[iii]

However, in order to make way for certain construction projects, 'limited strictly to **public works and projects essential to public within the prohibited area**', are now set to be introduced for consideration and passage during the ongoing Monsoon Session of the Indian Parliament under the proposed Bill. The major provisions of these amendments include:[iv]

a) "Insertion of a new definition of "public works" in section 2 of the Act".
b) "Amendment to section 20A of the Act so as to allow any Department or Office of the Central Government to carry out public works in the prohibited area after obtaining permission from the Central Government".
c) "Insertion of a new clause (ea) to section 20-I of the principal Act".

The proposed Bill states, "The prohibition of new construction within prohibited area of a protected area or protected monument, is adversely affecting the various public works and developmental projects of the Central Government". This has been cited as the reason for introducing the above amendments, "for public purposes which is necessary for the safety or security of the public at large".[v]

According to the Archaeological Survey of India (ASI), "There are at present **more than 3650 ancient monuments and archaeological sites and remains of national importance**. These monuments belong to different periods, ranging from the prehistoric period to the colonial period and are located in different geographical settings. They include temples, mosques, tombs, churches, cemeteries, forts, palaces, step-wells, rock-cut caves, and secular architecture as well as ancient mounds and sites which represent the remains of ancient habitation".[vi]

## PART II: Major Provisions

The AMASR Amendment Bill, 2017 has the following provisions:[vii]

- In section 2, after clause (j), the **definition for the "public works"** is being inserted. It states, "construction works related to infrastructure financed and carried out by any department or offices of the Central Government for public purposes which is necessary for the safety or security of the public at large and emergent necessity is based on specific instance of danger to the safety or security of the public at large and there is no reasonable possibility of any other viable alternative to such construction beyond the limits of the prohibited area".
- Under **Section 20A, sub-section 4** prohibits 'carrying out any public work or project essential to the public or other constructions' in the 'Prohibited Areas' of the National Protected Monuments. However, the amendments states that, **"Nothing contained in sub-section (4) shall apply to the public works"**.
- In **section 20-I after clause (e)**, the following clause is proposed: "(ea) to consider the impact, including archaeological impact, visual impact and heritage impact assessment, of public works which may be proposed in the prohibited area and make recommendations to the Central Government in respect thereof: Provided that **no recommendation for any construction works shall be made unless the Authority is satisfied that there is no reasonable possibility of any other viable alternative** for shifting such construction works beyond the limits of the prohibited area."

## PART III: Concern and Criticism

According to the proposed amendments, it has been stated that the **prime objective of the Bill is to avoid the conflict created between the construction of proposed public works in the 'prohibited area' and the AMASR Act, 1958**, which do not allow the same. However, it is difficult to understand how the government will decide what it considers public works within the Prohibited Area that are 'necessary for the safety or security of the public at large'. How will the encroachment or rather the gradual destruction of these monuments or sites of National importance serve the larger public interest?

- **The necessity for Preservation and Conservation:** Given that **Ahemdabad has just become India's first World Heritage City**, if anything the government should have planned on increasing the number of such cities by creating controls that are vigorously exercised with respect to the nature and quantum of development that will be allowed, so that the **basic ambience and purpose of the monument is not vitiated**, for e.g. a mausoleum or a dargah should not be surrounded by baaratghar, or if a garden was an essential part of the original design to provide a visual buffer to such a monument then rules must ensure preserved. That is real protection. Reducing proximal distance for **'safety and security' may be open to misuse**, especially if it will not be supported by expert knowledge.

  The government needs to ensure that it educates people on the fact that benefits of protection are quickly translated into **socio- economic gains by way of enhanced tourism activity** that generates employment, especially in the local area.

- **Stakeholders have not been consulted:** All aspects of a policy like this need to be debated holistically by all concerned ministries rather than in silos or just by department or offices of the Central Government that are carrying out the infrastructure work as proposed in the Bill. It is not clear if the government included the following departments and ministries while finalizing these amendments:

- ASI
- Environment
- Finance
- Social Justice
- Tourism
- Urban and Rural Development

Moreover, it has also been alleged that in the Ministry of Culture's note on the proposed Bill, "nowhere is it stated in it that the Archaeological Survey of India (under the Ministry of Culture) has cleared the proposal or that the Central Advisory Board of Archaeology has been consulted about it".[viii] This puts question marks on the intent and credibility of the proposed Bill, and also that concerned institutions and experts have been left out of the process.

- **Dilution of ASI and NMA's authority:** The Bill is **not clear about the role of the ASI and the National Monuments Authority** on deciding whether construction works by Central Government will be allowed around protected monuments. If these authorities, which are responsible for protecting our heritage, don't have the veto power in this decision then these institutions will become virtually toothless bodies and the Ministry of Culture will essentially be diluting its own mandate.

- **Lobbying by real estate sector:** Amendments like 'safety or security of the public at large' **could also be misused by the real sector lobby for freeing up land banks**.

- **Conflict of Cultural Ideology:** It is possible that certain monuments and sites belonging to a particular period or dynasty, for example the **Delhi Sultanate or the Mughal dynasties**, who are considered to be "invaders of India" by the **Right-wing ideology** might be razed on the pretext of 'security or safety issues to the general public'.

- **Violation of Article 49:** Above all, the proposed Bill fails Article 49 of the Indian Constitution. This particular Article which is under Part 4 - Directive Principles of State Policy of the Indian Constitution mandates the '**Protection of monuments and places and objects of national importance**, where it shall be the **obligation of the State to protect** every monument or place or object of artistic or historic interest, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be'.[ix]

## PART IV: Conclusion

It has to be noted that due to increasing pressure of habitation, especially in urban areas, protected monuments and sites continue to be encroached. This is affecting the safety, security and aesthetics of the National Monuments and sites.[x] In addition to the encroachments which some of these monuments are already witnessing, if the proposed Bill is passed, it is possible that the vested interests of private infrastructural development sectors could use these amendments to virtually render the ASI and NMA ineffective. National monuments and sites which have been preserved so far could gradually be completely encroached upon or destroyed by reducing proximal distance, and they could literally become 'history'.

Government must instead educate citizens and help them understand why it is important for us preserve monuments. We must learn from our failures in cities like Agra and Varanasi where erratic and piecemeal implementation of uncoordinated departmental actions have ruined a part of the city's history. Successful heritage cities like Cairo, Rome and Istanbul, or even Ahemadabad have prospered by weaving their heritage with ongoing development and taking strict action against those who harmed the balance between the two objectives. We rehabilitate people when building for public good. Similarly we should help people understand why we need to do so around monuments. They should be compensated for the real estate value and also given an opportunity to get livelihood opportunities in the same neighbourhood – if possible in areas related to the monument.

We cannot have a situation where we are virtually legislating the possible razing of ancient monuments, however dilapidated or small, because even a small stone from a wall helps build the history of our civilization. It is a link in a chain and we don't know when it could be recognized as the most significant one. It is from smaller monuments that the bigger, 'marketable' ones derive their importance, or their comparative excellence. That the Taj Mahal is the finest example of Mughal architecture and craftsmanship was not a decision taken by an individual. Experts established the fact by looking at all other Mughal buildings, good, bad, small, large, robust or abandoned.

How can we proclaim that we are the oldest continuous surviving civilization where heritage is continuously evolving if we allow an amendment that will obliterate history? Therefore, the proposed amendments must not be passed, and the Constitutional Values which have been invoked in Article 49 must be respected and strictly upheld for now and times to come.

# PART VII. REFERENCES

[i] http://pib.nic.in/newsite/PrintRelease.aspx?relid=161850
[ii] http://indianexpress.com/article/opinion/columns/hurting-heritage-amendments-to-the-monuments-act-threaten-historical-structures-ancient-monuments-and-archaeological-sites-and-remains-amasr-act-4751098/
[iii] http://indianexpress.com/article/opinion/columns/hurting-heritage-amendments-to-the-monuments-act-threaten-historical-structures-ancient-monuments-and-archaeological-sites-and-remains-amasr-act-4751098/
[iv] http://pib.nic.in/newsite/PrintRelease.aspx?relid=161850
[v] http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/107_2017_LS_Eng.pdf
[vi] http://asi.nic.in/asi_monuments.asp
[vii] http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/107_2017_LS_Eng.pdf
[viii] http://www.thehindu.com/opinion/op-ed/should-urbanisation-score-over-conservation/article19319432.ece
[ix] http://lawmin.nic.in/olwing/coi/coi-english/Const.Pock%202Pg.Rom8Fsss(7).pdf
[x] http://indianexpress.com/article/opinion/columns/hurting-heritage-amendments-to-the-monuments-act-threaten-historical-structures-ancient-monuments-and-archaeological-sites-and-remains-amasr-act-4751098/