

Bill No. 26 of 2010

**THE ANCIENT MONUMENTS AND ARCHAEOLOGICAL SITES AND
REMAINS (AMENDMENT AND VALIDATION) BILL, 2010**

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BILL

*further to amend the Ancient Monuments and Archaeological Sites and Remains Act, 1958
and to make provision for validation of certain actions taken by the Central Government
under the said Act.*

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

1. (1) This Act may be called the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010. Short title and commencement.

(2) Save as otherwise provided, it shall be deemed to have come into force on the 23rd day of January, 2010.

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

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(i) after clause (d), the following clauses shall be inserted and shall be deemed to have been inserted, namely:—

‘(da) “Authority” means the National Monuments Authority constituted under section 20F;

(*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;

(*ii*) after clause (*h*), the following clause shall be inserted and shall be deemed to have been inserted, namely:—

‘(*ha*) “prohibited area” means any area specified or declared to be a prohibited area under section 20A;’;

(*iii*) after clause (*j*), the following clauses shall be inserted and shall be deemed to have been inserted, namely:—

‘(*k*) “re-construction” means any erection of a structure or building to its pre-existing structure, having the same horizontal and vertical limits;

(*l*) “regulated area” means any area specified or declared under section 20B;

(*m*) “repair and renovation” means alterations to a pre-existing structure or building, but shall not include construction or re-construction;’.

Insertion of new section 4A.

3. After section 4 of the principal Act, the following section shall be inserted, namely:—

Categorisation and classification in respect of ancient monuments or archaeological sites and remains declared as of national importance under sections 3 and 4.

“4A. (*I*) 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 (*I*) 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.”.

Insertion of new section 20A.

4. On and from the 16th day of June, 1992, after section 20 of the principal Act, the following section shall be inserted and shall be deemed to have been inserted, namely:—

PROHIBITED AND REGULATED AREAS

Declaration of prohibited area and carrying out public work or other works in prohibited area.

“20A. 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.

(2) Save as otherwise provided in section 20C, no person, other than an archaeological officer, shall carry out any construction in any prohibited area.

(3) In a case where the Central Government or the Director-General, as the case may be, is satisfied that—

(a) it is necessary or expedient for carrying out such public work or any project essential to the public; or

(b) such other work or project, in its opinion, shall not have any substantial adverse impact on the preservation, safety, security of, or, access to, the monument or its immediate surrounding,

it or he may, notwithstanding anything contained in sub-section (2), in exceptional cases and having regard to the public interest, by order and for reasons to be recorded in writing, permit, such public work or project essential to the public or other constructions, to be carried out in a prohibited area:

Provided 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 prohibited area in respect of such protected monument, shall be deemed to be the prohibited area declared in respect of that protected monument in accordance with the provisions of this Act and any permission or licence granted by the Central Government or the Director-General, as the case may be, for the construction within the prohibited area on the basis of the recommendation of the Expert Advisory Committee, 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:

Provided further that nothing contained in the first proviso shall apply to any permission granted, subsequent to the completion of construction or re-construction of any building or structure in any prohibited area in pursuance of the notification of the Government of India in the Department of Culture (Archaeological Survey of India) number S.O. 1764, dated the 16th June, 1992 issued under rule 34 of the Ancient Monuments and Archaeological Sites and Remains Rules, 1959, or, without having obtained the recommendations of the Committee constituted in pursuance of the order of the Government of India number 24/22/2006-M, dated the 20th July, 2006 (subsequently referred to as the Expert Advisory Committee in orders dated the 27th August, 2008 and the 5th May, 2009).”.

5. In section 20A of the principal Act (as so inserted by section 4 of this Act), after sub-section (3), the following sub-section shall be inserted, namely:—

Amendment of section 20A.

“(4) No permission, referred to in sub-section (3), including carrying out any public work or project essential to the public or other constructions, shall be granted in any prohibited area on and after the date on which the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Bill, 2010 receives the assent of the President.”.

6. On and from the 16th day of June, 1992, after section 20A of the principal Act, the following section shall be inserted and shall be deemed to have been inserted, namely:—

Insertion of new section 20B.

“20B. (1) Every area, beginning at the limit of prohibited area in respect of every ancient monument and archaeological sites 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 sites and remains:

Declaration of regulated area in respect of every protected monument.

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.”.

7. After section 20B of the principal Act (as so inserted by section 6 of this Act) the following sections shall be inserted, namely:—

Insertion of new sections 20C, 20D, 20E, 20F, 20G, 20H, 20I, 20J, 20K, 20L, 20M, 20N, 20O, 20P and 20Q.

Application for repair or renovation in prohibited area, or construction or reconstruction or repair or renovation in regulated area.

‘20C. (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.

GRANT OF PERMISSION BY COMPETENT AUTHORITY

20D. (1) Every application for grant of permission under section 20C of this Act shall be made to the competent authority in such manner as may be prescribed.

(2) The competent authority shall, within fifteen days of the receipt of the application, forward the same to the Authority to consider and intimate impact of such construction (including the impact of large-scale development project, public project and project essential to the public) having regard to the heritage bye-laws relating to the concerned protected monument or protected area, as the case may be:

Provided that the Central Government may prescribe the category of applications in respect of which the permission may be granted under this sub-section and the application which shall be referred to the Authority for its recommendations.

(3) The Authority shall, within two months from the date of receipt of application under sub-section (2), intimate to the competent authority impact of such construction (including the impact of large-scale development project, public project and project essential to the public).

(4) The competent authority shall, within one month of the receipt of intimation from the Authority under sub-section (3), either grant permission or refuse the same as so recommended by the Authority.

(5) The recommendations of the Authority shall be final.

(6) In case the competent authority refuses to grant permission under this section, it shall, by order in writing, after giving an opportunity to the concerned person, intimate such refusal within three months from the date of receipt of the application to the applicant, the Central Government and the Authority.

Grant of permission by competent authority within regulated area.

(7) If the competent authority, after grant of the permission under sub-section (4) and during the carrying out of the repair or renovation work or re-construction of building or construction referred to in that sub-section, is of the opinion (on the basis of material in his possession or otherwise) that such repair or renovation work or reconstruction of building or construction is likely to have an adverse impact on the preservation, safety, security or access to the monument considerably, it may refer the same to the Authority for its recommendations and if so recommended, withdraw the permission granted under sub-section (4) if so required:

Provided that the competent authority may, in exceptional cases, with the approval of the Authority grant permission to the applicant referred to in sub-section (2) of section 20C until the heritage bye-laws have been prepared under sub-section (1) of section 20E and published under sub-section (7) of that section.

(8) The Central Government, or the Director-General, as the case may be, shall exhibit, on their website, all the permissions granted or refused under this Act.

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20E. (1) The competent authority, in consultation with Indian National Trust for Arts and Cultural Heritage, being a trust registered under the Indian Trust Act, 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.

Heritage bye-laws.

(2) The heritage bye-laws referred to in sub-section (1) shall, in addition to such matters as may be prescribed, include matters relating to heritage controls such as elevations, facades, drainage systems, roads and service infrastructure (including electric poles, water and sewer pipelines).

(3) The Central Government shall, by rules, specify the manner of preparation of detailed site plans in respect of each protected area or protected monument or prohibited area or regulated area, the time within which such heritage bye-laws shall be prepared and particulars to be included in each such heritage bye-laws.

(4) The competent authority for the purpose of preparation of detailed site plans and heritage bye-laws may appoint such number of experts or consultants as it may deem fit.

(5) A copy of the each heritage bye-laws prepared under sub-section (1) shall be forwarded to the Authority for its approval.

(6) A copy of the heritage bye-laws, as approved by the Authority under sub-section (5) shall be laid before each House of Parliament.

(7) Each heritage bye-laws shall, be made available by the competent authority to the public, by exhibiting the same on its website and also in such other manner as it may deem fit, immediately after laying the same before each House of Parliament.

NATIONAL MONUMENTS AUTHORITY

20F. (1) **The Central Government shall, by notification in the Official Gazette, constitute an Authority to be called as the National Monuments Authority.**

Constitution of National Monuments Authority.

(2) **The Authority shall consist of,—**

(a) **a Chairperson, on whole-time basis, to be appointed by the President, having proven experience and expertise in the fields of archaeology, country and town planning, architecture, heritage and conservation-architecture or law;**

(b) **such number of members not exceeding five whole-time members and five part-time members to be appointed, on the recommendation of the Selection Committee referred to in section 20G, by the Central Government, having proven experience and expertise in the fields of archaeology, country and town planning, architecture, heritage, conservation-architecture or law.**

(c) the Director-General as member, *ex officio*.

(3) The tenure of the whole-time Chairperson or every whole-time member and every part-time member, of the Authority shall be three years from the date on which he assumes office as such and shall not be eligible for re-appointment:

Provided that, save as otherwise provided in clause (c) of sub-section (2), any person who has held any post in the Archaeological Survey of India or in the Ministry of Culture of the Government of India or a State Government or has not been found fit to be considered for being appointed to any such post shall, not be eligible to be appointed as the Chairperson or a member of the Authority:

Provided further that any person, who had either been granted a permission or licence or refused any such permission or refused grant of a licence or any person or any of his relative having any interest in a prohibited area or a regulated area shall not be eligible to be appointed as a Chairperson or member.

Explanation.—For the purposes of this section, “relative” means—

- (i) spouse of the Chairperson or member of the Authority;
- (ii) brother or sister of the Chairperson or member of the Authority;
- (iii) brother or sister of the spouse of the Chairperson or member of the Authority;
- (iv) brother or sister of either of the parents of the Chairperson or member of the Authority;
- (v) any lineal ascendant or descendant of the Chairperson or member of the Authority;
- (vi) any lineal ascendant or descendant of the spouse of the Chairperson or member of the Authority;
- (vii) spouse of the person referred to in clauses (ii) to (vi);

(4) An officer, not below the rank of Joint Secretary to the Government of India, shall be the Member Secretary of the Authority.

(5) The Central Government shall provide such number of officers and other employees as may be necessary for discharge of functions by the Authority under this Act.

Selection Committee for selection of members of Authority.

20G. (1) Every whole-time member and every part-time member of the Authority shall be selected by a Selection Committee consisting of the following persons, namely:—

- (a) Cabinet Secretary — Chairperson, *ex officio*;
- (b) Secretary in the Ministry of Culture — member, *ex officio*;
- (c) Secretary in the Ministry of Urban development— member, *ex officio*.
- (d) three experts, having proven experience and expertise in the fields of archaeology, architecture, heritage or conservation-architecture to be nominated by the Central Government.

(2) The Selection Committee referred to in sub-section (1) shall regulate its own procedure for the purposes of selecting whole-time members and part-time members of the Authority.

Salary, allowances and meetings of Authority.

20H. (1) **The salaries and allowances payable to the whole-time Chairperson and whole-time members, and the other terms and conditions of their service or fees or allowances payable to the part-time members, of the Authority shall be such as may be prescribed:**

Provided that neither the salary and allowances nor the other terms and conditions of service of the whole-time Chairperson and whole-time members shall be varied to their disadvantage after their appointment.

(2) The Authority shall regulate its own procedure for the purposes of holding its meetings (including quorum of such meetings) and granting permissions under this Act.

(3) All the decisions of the Authority shall be published in such manner as it may decide and also on its own website and on the website of the Central Government.

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

Functions and powers of Authority.

(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;

(b) make recommendations 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, as of national importance under section 4;

(c) oversee the working of the competent authorities;

(d) to suggest measures for implementation of the provisions of the 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 when trying a suit in respect of the following matters, namely:—

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(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.

20J. (1) Notwithstanding anything contained in sub-section (3) of section 20F, the President in the case of the Chairperson and the Central Government in the case of whole-time member and part-time member may, by order, remove from office, the Chairperson or any such member of the Authority, if he —

Removal of Chairperson and members.

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as Chairperson or member; or

(d) has acquired such financial or other interests as is likely to affect prejudicially his functions; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) The Chairperson or any member of the Authority shall not be removed under clauses (d) and (e) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter.

20K. 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

Restriction on future employment by Chairperson and members.

or organisation of any nature mainly dealing with to archaeology, country and town planning, architecture, heritage and conservation-architecture or whose matters had been before the Chairperson or such member.

Power of Central Government to issue directions to Authority.

20L. (1) Without prejudice to the foregoing provisions of this Act, the Authority shall, in exercise of its powers or the discharge of its functions under this Act, be bound by such directions on question of policy, other than those relating to technical and administrative matters, as the Central Government may give in writing to it from time to time:

Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government, whether a question is one of policy or not, shall be final.

Power of Central Government to issue directions to competent authority.

20M. Without prejudice to the foregoing provisions of this Act, the competent authority shall, in exercise of its powers or the discharge of its functions under this Act, be bound by such directions, as the Central Government may give in writing to it from time to time.

Power of Central Government to supersede Authority.

20N. (1) If, at any time the Central Government is of the opinion,—

(a) that, on account of circumstances beyond the control of the Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or

(b) that the Authority has persistently defaulted in complying with any direction given by the Central Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Authority or the administration of the Authority has suffered; or

(c) that circumstances exist which render it necessary in the public interest so to do,

the Central Government may, by notification in the Official Gazette, supersede the Authority for such period, not exceeding six months, as may be specified in the notification and appoint a person or persons as the President may direct to exercise powers and discharge functions under this Act:

Provided that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Authority to make representations against the proposed supersession and shall consider the representations, if any, of the Authority.

(2) Upon the publication of a notification under sub-section (1) superseding the Authority,—

(a) the Chairperson and all other whole-time members and part-time members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Authority shall, until the Authority is reconstituted under sub-section (3), be exercised and discharged by the person or persons referred to in sub-section (1); and

(c) all properties owned or controlled by the Authority shall, until the Authority is reconstituted under sub-section (3), vest in the Central Government.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government shall reconstitute the Authority by a fresh appointment of its Chairperson and other whole-time members and part-time members and in such case any person who had vacated his office under

clause (a) of sub-section (2) shall not be deemed to be disqualified, subject to the provisions of sub-section (3) of section 20P for re-appointment for the remaining period.

(4) The Central Government shall cause a copy of the notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

20-O. No civil court shall have jurisdiction in respect of any matter which the Authority is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Bar of jurisdiction of civil court.

20P. (1) The Authority shall prepare once in every year, in such form and at such time as may be prescribed by the Central Government, an annual report giving full description of all the activities of the Authority for the previous year.

Annual report.

(2) A copy of the report received under sub-section (1) shall be laid, as soon as may be after it is received, before each House of Parliament.

20Q. Where the Central Government considers it expedient so to do, it may, by order in writing call upon the Authority or the competent authority, as the case may be, to furnish in writing such information, in such form and manner as may be prescribed, relating to its affairs as the Central Government may require.”.

Power to call for information.

8. In section 30 of the principal Act,—

(a) in sub-section (1),—

(i) for the words “imprisonment which may extend to three months”, the words “imprisonment which may extend to two years” shall be substituted;

(ii) for the words “fine which may extend to five thousand rupees”, the words “fine which may extend to one lakh rupees” shall be substituted;

(b) in sub-section (2), for the words “fine which may extend to five thousand rupees”, the words “imprisonment which may extend to two years or with fine which may extend to one lakh rupees or with both” shall be substituted.

Amendment of section 30.

9. After section 30 of the principal Act, the following sections shall be inserted, namely:—

“30A. Whoever raises, on and after the date on which the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Bill, 2010, receives the assent of the President, any construction in the prohibited area, shall be punishable with imprisonment not exceeding two years or with fine which may extend to one lakh rupees or with both.

Insertion of sections 30A, 30B and 30C.
Punishment for construction, etc., in prohibited area.

30B. Whoever raises, on and after the date on which the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Bill, 2010, receives the assent of the President, any construction in the regulated area without the previous permission of the competent authority or in contravention of the permission granted by the competent authority, shall be punishable with imprisonment not exceeding two years or with fine which may extend to one lakh rupees or with both.

Punishment for construction, etc., in regulated area.

30C. If any officer of the Central Government enters into or acquiesces in any agreement to do, abstains from doing, permits, conceals or connives at any act or thing whereby any construction or reconstruction takes place in a prohibited area or regulated area, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.”.

Offences by officers of Government.

10. After section 35 of the principal Act, the following sections shall be inserted, namely :—

Insertion of new sections 35A and 35B.

Obligation to survey the protected prohibited area and regulated areas.

“35A. (1) The Director-General shall, within such time as may be specified by the Central Government, conduct a survey or cause survey to be conducted in respect of all prohibited areas and regulated areas for the purpose of detailed site plans.

(2) A report in respect of such survey referred to in sub-section (1) shall be forwarded to the Central Government and to the Authority.

Identification of un- authorised constructions on or after 16th June, 1992.

35B. (1) The Director-General shall, within such time as may be specified by the Central Government, identify or cause to be identified, all constructions (of whatever nature) made on and after the 16th day of June, 1992 in all prohibited areas and regulated areas and, thereafter, submit from time to time a report in respect thereof to the Central Government.

(2) The Director-General shall, for the purposes of sub section (1), have the power to call for information from the local bodies and other authorities.”.

Amendment of section 38.

11. In section 38 of the principal Act, in sub-section (2), after clause (c), the following clauses shall be inserted, namely:—

“(ca) the categories of ancient monuments or archaeological sites and remains, declared as of national importance, under sub-section (1) of section 4A;

(cb) the manner of making application for grant of permission under sub-section (1) of section 20D;

(cc) the category of applications in respect of which the permission may be granted and applications which shall be referred to the Authority for its recommendation, under sub-section (2) of section 20D;

(cd) the other matters including heritage controls such as elevations, facades, drainage systems, roads and service infrastructure (including electric poles, water and sewer pipelines) under sub-section (2) of section 20E;

(ce) the manner of preparation of detailed site plans in respect of each prohibited area and regulated area and the time within which such heritage bye-laws shall be prepared and particulars to be included in each such heritage bye-laws under sub-section (3) of section 20E;

(cf) salaries and allowances payable to, and the other terms and conditions of service of, the whole-time Chairperson and whole-time members, or fees or allowances payable to the part-time members, of the Authority under sub-section (1) of section 20H;

(cg) the form in which and time at which the Authority shall prepare an annual report giving full description of its activities for the previous year under section 20P;

(ch) the form and manner in which the Authority and competent authority shall furnish information to the Central Government under section 20Q;”.

Validation of action taken, etc., under notification No.S.O.1764, dated 16th June, 1992.

12. Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority—

(a) any thing done or purported to be done or any action taken or purported to be taken by the Central Government, except as provided in the second proviso to sub-section (3) of 20A, immediately before the commencement of this Act, in pursuance of the notification of the Government of India in the Department of Culture (Archaeological Survey of India) number S.O.1764, dated the 16th June, 1992 issued under rule 34 of the Ancient Monuments and Archaeological Sites and Remains Rules, 1959, shall be deemed to be and deemed to have always been done or taken validly and in accordance with law at all material times [except as provided in the second proviso to sub-section (3) of section 20A] and no action taken or thing done (including any order made, agreement entered into, or notification issued for constituting any Expert Advisory Committee) in connection with any permission granted or licence issued for any construction in a prohibited area or a regulated area

- 24 of 1958. in respect of a protected monument, shall be deemed to be invalid or ever to have become invalid except as provided in the second proviso to sub-section (3) of section 20A merely on the ground that the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or the rules, orders or notifications issued thereunder did not contain any provision for constitution of an Expert Advisory Committee or Advisory Committee, as the case may be;
- 24 of 1958. (b) no suit, claim or other proceedings shall be instituted, maintained or continued in any court, tribunal or other authority for any permission or licence granted by the Central Government or the Director-General under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or any rule, order or notification made thereunder for carrying out any repair, renovation or construction work or for undertaking any public work or public project before the commencement of this Act;
- 24 of 1958. (c) no claim or challenge shall be made in or entertained by any court, tribunal or other authority solely on the ground that the Central Government or the Director-General did not take into consideration any of the provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958, as amended by the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Ordinance, 2010, in granting any permission or licence for the purpose of carrying out any mining or repair, renovation or construction work in a prohibited area or a regulated area at any time between the 16th day of June, 1992 and the date of commencement of this Act.
- Ord. 1 of 2010. **13.** (1) The Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Ordinance, 2010 is hereby repealed. Repeal and savings.
- Ord. 1 of 2010. (2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the principal Act as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (the Act) was enacted, *inter alia*, for preservation of ancient and historical monuments and archaeological sites and remains of national importance. With the passage of time, the implementation of the provisions of the Act has become difficult especially due to increase in population in the areas surrounding the monuments and sites which is detrimental to the safety and security of monuments. Besides, the penal provisions in the Act for endangering the monuments, etc., are not stringent enough to provide effective deterrence. As a consequence of increased pressures of habitation, especially in urban area, protected monuments and protected sites are getting hemmed in from all sides, detracting from the aesthetics of the monuments and sites.

2. Since urgent and compelling reasons existed for amendments to the Ancient Monuments and Archaeological Sites and Remains Act, 1958, and Parliament was not in session, the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Ordinance, 2010, was promulgated on the 23rd January, 2010, *inter alia*, to provide for—

(i) constitution of one or more Expert Advisory Committees for making recommendations for,—

(a) declaration of prohibited and regulated areas in respect of each monument separately taking into account the ground realities;

(b) declaration of public works and public projects which can be permitted in prohibited or regulated areas subject to prescribed terms and conditions;

(c) consideration of applications for repairs, renovation, construction or reconstruction for special permission in prohibited areas and licences in regulated areas subject to prescribed terms and conditions;

(ii) notification by the Central Government of important public works and projects, and permission for repairs and renovation of buildings and other constructions which existed in the prohibited areas of the monuments prior to the 16th June, 1992;

(iii) validation of actions taken by the Director-General either with or without the advice of any Expert Advisory Committee during the period 1992 to till date.

3. Subsequent to the promulgation of the aforesaid Ordinance, certain issues were raised and after considering all such issues and other factors, it has been decided to include certain additional provisions in the Bill replacing Ordinance and modify certain provisions of the Ordinance and to ensure that the monuments and sites declared to be of national importance would receive greater protection and Government be able to showcase these in manner befitting their importance.

4. In view of the foregoing paragraphs, the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Bill, 2010 replacing the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Ordinance, 2010, *inter alia*, provides—

(a) that a minimum area of one hundred metres in all directions of protected monuments and sites shall be “prohibited area” for purposes of construction and no public or private project will be permissible in the prohibited areas except undertaken by an archaeological officer in the interest of upkeep, maintenance and management of the protected monument and site and such prohibited area may be increased beyond one hundred metres by the Central Government;

(b) that a minimum area of two hundred metres in all directions from the “prohibited area” surrounding the protected monuments and sites shall be “regulated area” and that no construction will be permitted, except in accordance with and to the extent permitted by, heritage bye-laws which shall be approved and such regulated area may be increased beyond two hundred metres by the Central Government;

(c) that until the heritage bye-laws are notified, no permission for repair or renovation or construction or reconstruction will be considered, except in exceptional cases only with the approval of the National Monuments Authority;

(d) for constitution of the National Monuments Authority to, *inter alia*, grade and classify monuments; oversee the working of competent authority; suggest measures for implementation of the provisions of the Act; consider the impact of large-scale developmental projects which may be proposed in the regulated areas and make recommendations to the competent authority for grant of permission;

(e) for specifying the competent authorities for the purpose of grant of permission for repair or renovation in prohibited area and construction or reconstruction or repair or renovation in regulated area after obtaining the approval of the Authority till such time heritage bye-laws are notified for each protected monuments and protected sites in India;

(f) for stringent punishments for violations of the provision of the Act with a view to provide effective deterrence to the violators which may extend to imprisonment up to two years or fine up to one *lakh* rupees, or with both;

(g) for punishment of offences by officers of the Government in certain cases;

(h) for validation of certain permissions for construction activities in the prohibited areas, given by the Archaeological Survey of India in the past to a limited extent, although no future construction of any nature is to be permitted in these areas by any authority, including the Archaeological Survey of India.

5. The Bill seeks to achieve the above objectives.

MANMOHAN SINGH

NEW DELHI;
The 5th March, 2010.

FINANCIAL MEMORANDUM

Clause 7 of the Bill, *inter alia*, seeks to insert sections 20F and 20H in the Ancient Monuments and Archaeological Sites and Remains Act, 1958. The proposed section 20F provides for constitution of a National Monuments Authority, consisting of a Chairperson, and five whole-time members and five part-time members and the proposed section 20H provides for salaries and allowances payable to whole-time Chairperson and member and fee or allowances payable to the part-time members. It is proposed that the Central Government shall bear the expenditure on the constitution of the National Authority. The non-recurring expenditure to the tune of about twenty crore rupees and recurring expenditure of about twenty crore rupees per annum would be required.

2. Clause 10 of the Bill seeks to insert sections 35A in and 35B the said Act which provides that the Director-General shall conduct a survey, or cause survey to be conducted in respect of prohibited area and regulated area of each protected monument, for the purpose of detailed site plans and identification of unauthorised constructions which would entail an expenditure of about two hundred-fifty crore rupees to three hundred crore rupees over a three years period.

3. The aforesaid expenditure would be met from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 11 of the Bill seeks to amend section 38 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 so as to confer powers upon the Central Government to make rules, in respect of matters specified therein. These matters, *inter alia*, include—

(a) categorisation of ancient monuments or archaeological sites and remains, declared as of national importance, under sub-section (1) of section 4A;

(b) the manner of making application for grant of permission under sub-section (1) of section 20D;

(c) the category of applications in respect of which the permission is to be granted and applications which shall be referred to the Authority for its recommendation, under sub-section (2) of section 20D;

(d) the other matters including heritage controls such as elevations, facades, drainage systems, roads and service infrastructure (including electric poles, water and sewer pipelines) under sub-section (2) of section 20E;

(e) the manner of preparation of detailed site plans in respect of each prohibited area and regulated area and the time within which the heritage bye-laws shall be prepared and particulars to be included in each such heritage bye-laws under sub-section (3) of section 20E;

(f) the salaries and allowances payable to, and the other terms and conditions of service of, the whole-time Chairperson and whole-time members; or fees or allowances payable to the part-time members, of the Authority under sub-section (1) of section 20H;

(g) the form in which and the time within which the Authority shall prepare an annual report giving full description of its activities for the previous year under section 20P;

(h) the form and manner in which the Authority and competent authority shall furnish information to the Central Government under section 20Q.

2. The rules made under section 38 and the heritage bye-laws made under section 20E shall be laid before each House of Parliament.

3. The matters in respect of which said rules may be made are matters of procedure and administrative detail and it is not practicable to provide for them in the proposed legislation itself. The delegation of legislative power is, therefore, of a normal character.

Memorandum explaining the modifications contained in the Bill to replace the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Ordinance, 2010

The Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Bill, 2010, which seeks to repeal and replace the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Ordinance, 2010, proposes to make the following modifications apart from modifications of consequential or drafting nature in the provisions contained in the said Ordinance, namely:—

(1) The words ‘for public purposes’ have been dropped from the Preamble of the Bill to make the provision broad-based.

(2) The word ‘Ordinance’ has been replaced with ‘Act’ in the text of clause 1 of the proposed Bill.

(3) ‘Authority’ (‘National Monuments Authority’) has been inserted in clause 2(i)(da);

(4) ‘Competent Authority’, an officer not below the rank of Director of archaeology or Commissioner of archaeology of the Central or State Government or equivalent rank by notification in the Official Gazette to perform functions under the proposed Act has been inserted under clause 2(i)(db). The Bill also provides for appointment of different competent authorities for the purposes of sections, 20C, 20D and 20E.

(5) ‘Construction’ has been defined under clause 2(i)(dc) in the proposed Bill.

(6) The proposed Bill defines the ‘prohibited area’ as per clause 2(ii)(ha) in the definition the words “specified or” has been inserted after the words “any area”.

(7) ‘Reconstruction’ has been defined under clause 2(iii)(k).

(8) ‘Regulated area’ has been defined as per clause 2(iii)(l) of the proposed Act in the definition the words “specified or” has been inserted after the words “any area”.

(9) The definition of ‘repair and renovation’ has been inserted after clause 2(iii)(j) as clause 2(iii)(m) in the proposed Bill.

(10) The Central Government has been authorised as per section 4A(1) on the recommendation of the Authority to prescribe categories in respect of ancient monuments or archaeological sites and remains declared as of national importance on the basis of their historical, archaeological and architectural value and such other factors as may be relevant for the purpose.

(11) The proposed Bill provides for classification of the ancient monuments or archaeological sites and remains declared as of national importance in accordance with the categories under section 4A(2) and make available to the public such classification on website.

(12) The ‘prohibited area’ has been clearly defined as beginning at the limit of the protected area or the protected monument, and extending to a distance of one hundred meters in all directions as per proposed Act under section 20A(1). The Central Government has been authorised to specify an area even more than one hundred metres to be the prohibited area having regard to the classification of any protected monument or protected area on the recommendation of the ‘Authority’, by notification in the Official Gazette.

(13) The Bill incorporates ‘save as otherwise provided in section 20C’ in sub-section (2) of section 20A, which was not there in the Ordinance. However, there is some changes in the wording of the clause.

(14) There is no substantial change in the provision except addition of 'Director-General' after 'Central Government'.

(15) In section 20A(3)(a), 'as may be notified in the Official Gazette' has been dropped and 'or other construction' has instead been added to avoid ambiguity.

(16) In section 20A(3)(b), 'or other construction', has been inserted after 'public' and 'in a prohibited area' after 'carried out'.

(17) A proviso has been inserted under clause 20A(3)(b) to make the construction activities further stringent. The authority of the Director-General to grant permission for construction in prohibited area, in exceptional cases, on the recommendation of Expert Advisory Committee has been dropped from the proposed Bill.

(18) In the second proviso under clause 20A(3)(b) 'or such notification has not been laid before Parliament' has been dropped. The phrasing of the proviso has been suitably modified to make the provision further stringent.

(19) A new provision has been provided under section 20A(5) to prohibit any public work or project essential to the public or other constructions in the prohibited area after the date of the assent of the President on the Bill.

(20) As per section 20B(1) the limit of 'regulated area' has been fixed to a minimum of two hundred metres rather than keeping it flexible to be declared by the Central Government on the recommendation of the Expert Advisory Committee from time to time as provided in the Ordinance. A proviso has also been inserted in the Bill to specify an area even more than two hundred meters having regard to the classification of any 'protected monument' or 'protected area'.

(21) In the second proviso of section 20B(1), the clause, 'notwithstanding anything contained in sub-section (1) and this sub-section or that such notification had not been laid before Parliament, be deemed to have been validly granted' provided in the Ordinance has been deleted from the proposed Bill.

(22) The words, 'or re-construction of such building or construction' have been deleted from sub-section 20C(1) to ensure that none is authorised to make application for 'reconstruction' or 'construction' in the 'prohibited area' of 'protected monument' or 'archaeological site and remains'.

(23) Section 20C(1)(b) of Ordinance has been dropped.

(24) In sub-section 20C(2) the word 'he' has been deleted. Besides, 'Director General' has been replaced with 'competent authority'. The words 'carrying out' have been added in the Act. Sub-sections (2), (3), (4), (5) and (6) of section 20C of the Ordinance have been deleted, which refer to procedure to make application for grant of permission and its disposal. Section 20(C) (2) of the proposed Bill provides for making application to the 'competent authority' for carrying out 'construction' or 'reconstruction' or 'repair' or 'renovation' in the 'regulated area'.

(25) Section 20D(1) has been modified to accommodate the procedure to make application for grant of permission for 'repairs', and 'renovation' in 'prohibited area' and 'repairs', 'renovation', 'reconstruction' or 'construction' in the 'regulated area'. The provision made in the Ordinance to constitute 'Expert Advisory Committee' has been replaced with 'Authority' and 'competent authority' and hence, the relevant clauses have been dropped from the proposed Bill. The proviso under section 20D(1) of the Ordinance has been dropped.

(26) Section 20D(2) of the Ordinance has been modified. Procedure has been elaborated in the proposed Bill for making reference by the 'competent authority' to the 'Authority' for consideration and assessing impact of construction (including the

impact of large-scale development project, public project and project essential to the public) having regard to the 'heritage bye-laws' relating to the concerned protected monument or protected site. A proviso has also been made to authorise to prescribe the category of applications in respect of which the permission may be granted under section 20D(2) and the applications which shall be referred to the 'Authority' for its recommendations.

(27) The provision made under Section 20D(3) of the Ordinance has been replaced. Section 20D(3) of the proposed Bill now provides for time limit within which the 'Authority' shall intimate to the 'competent authority' the recommendations on proposed 'construction' (including large scale development project, public project and project essential to the public). The sub-section has been accordingly re-drafted.

(28) The provision made under section 20D(4) of the Ordinance has been replaced. Section 20D(4) of the Bill lays down the time limit within which the 'competent authority' shall grant permission or refuse the same after receipt of the recommendation from the 'Authority'.

(29) The provision made under section 20D(5) of the Ordinance has been replaced. Section 20D(5) of the Bill makes it clear that the recommendations of the 'Authority' shall be final.

(30) The provision made under section 20D(6) of the Ordinance has been replaced. Section 20D(6) of the Bill provides for making reasoned order to be made in respect of refusal to grant permission and also the time limit within which the action is to be accomplished.

(31) The provision made under section 20D(7) of the Ordinance has been replaced. As per the provision under section 20D(7) of the Bill, the 'competent authority' has been authorised to withdraw the permission granted on the basis of recommendation made by the 'Authority' in respect of those cases wherein it is found that the ongoing 'construction' is likely to cause adverse impact on the monument.

(32) A new proviso has been made under section 20D(7) to authorise the 'competent authority' to grant permission to the applicant referred to in sub-section (2) of section 20C, with the approval of the 'Authority' until the 'heritage bye-laws' have been prepared and published, in exceptional cases.

(33) A new provision has been made under section 20D(7) for exhibiting on the website, all the permissions granted or refused.

(34) Section 20D(8) of the Ordinance has been deleted since the proposed Bill does not have the provision for 'Expert Advisory Committee'.

(35) New sub-sections (1) and (2) to section 20E have been inserted which deal with 'heritage bye-laws' to be prepared in respect of each protected monument in consultation with INTACH or such other expert heritage bodies. It has been provided to detail out the heritage controls to be adhered to in respect of elevation, façade, drainage system, road and service infrastructure.

(36) New section 20E(3), makes it statutory to prepare detailed site plan for 'protected area' or 'protected monument' or 'prohibited area' or 'regulated area' in respect of each 'protected monument' or 'archaeological site and remains'.

(37) A new provision has been inserted as sub-section (4) in section 20E to appoint 'experts' or 'consultants' for preparation of site plans and 'heritage bye-laws'.

(38) Section 20E(5) has been incorporated in the Bill for approval of the 'heritage bye-laws' by the 'Authority'.

(39) Section 20E(6) has been inserted through which it has been made mandatory for laying each 'heritage bye-laws' on the table of both the Houses of Parliament.

(40) Section 20E (7) is a new provision which refers to exhibiting the 'heritage bye-laws' by the 'Competent Authority' on the website and also in such other manner as it may deem fit, after laying the same before each House of Parliament.

(41) Sub-section 20F(1) of the Bill provides for constitution of 'Authority' by the 'Central Government' to be called as the 'National Monument Authority' by a notification in the Official Gazette. This is a new provision made in the proposed Bill.

(42) Section 20F(2) deals with the eligibility criteria for appointment of Chairperson and members of the Authority.

(43) The tenure and disqualification have been provided in section 20F(3) and this section also provides definition of relative.

(44) Section 20F(4) is a new section. It provides that the Member Secretary of the 'Authority' shall not be below the rank of 'Joint Secretary' to the Government of India.

(45) Necessary statutory provision has also been made in section 20F(5) of the proposed Bill to provide such number of officers and other employees as may be necessary for discharge of functions by the 'Authority'.

(46) The constitution of Selection Committee for selection of members of the 'Authority' has been dealt with in section 20G.

(47) Salary, allowances and meetings of 'Authority' have been provided under section 20H.

(48) It has been made mandatory to publish the decision of the 'Authority' on its website and on the Central Government under section 20H(3).

(49) The functions and powers of the 'Authority' have been elaborated under section 20-I.

(50) Section 20J deals with removal of Chairperson and members of the 'Authority'.

(51) Section 20K is a new provision which lays down certain restrictions on future employment for Chairperson and members of the 'Authority'.

(52) The Central Government has been authorised under section 20L to issue necessary direction to the 'Authority' in exercise of its powers or the performance of its functions under the proposed Bill. It has been provided that the 'Authority' shall be bound by the directions of the Central Government.

(53) The Central Government has also been authorised to issue directions to the 'Competent Authority' in discharge of its functions and exercise of its powers under section 20H.

(54) In section 20N, the Central Government has been authorised to supersede the 'Authority'. The circumstance under which the Central Government may exercise this power has been clearly set-out.

(55) Section 20-O bars the jurisdiction of the civil courts in respect of matters coming under the purview of the 'Authority'.

(56) It has been made binding on the 'Authority' under section 20P to prepare and submit annual report or its activities and a copy of the same shall be laid before each House of Parliament.

(57) Section 20Q empowers the Central Government to call for any information from the 'Authority' or the 'competent authority'.

(58) Clause 8 of the Bill deals with amendment of section 30 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958, which deals with penalty.

(59) As per amended provision [clause 8(a)], the imprisonment has been enhanced from three months to two years and the quantum of fine from rupees five thousand to rupees one lakh.

(60) Clause 8(b) of the proposed Bill provides substitution of words 'fine which may extend to five thousand rupees', with the words 'imprisonment which may extend to two years or with fine which may extend to one lakh rupees or with both'.

(61) A new clause 9 has been added in the Bill which provides the insertion of new sections 30A, 30B and 30C of the prescribed Act. Punishment for raising 'construction' in 'prohibited area' and 'regulated area' of protected monuments and protected sites, on and after the date on which the assent of the President is obtained on the Bill has been provided with of imprisonment not exceeding two years or with fine which may extend to one lakh rupees or with both. The officers of the Central Government are also liable for punishment with imprisonment for a term which may extend to three years, or with fine, or with both for the offences under the proposed Bill.

(62) A new clause 10 has been proposed in the Bill in the principle Act, which makes its obligatory for the Director General to survey the 'protected', 'prohibited' and 'regulated' areas for the purpose of preparing detailed site plans and submit a report in this regard to the Central Government.

(63) Clause 10 of the Bill [section 35B(1)] provides that the Director-General, within such time as may be specified by the Central Government, identify all 'constructions' made on and after the 16th day of June, 1992 in all 'prohibited areas' and submit from time to time a report in respect thereof to the Central Government.

(64) Section 35B(2) under clause 10 authorises the Director-General to call for information from the local bodies and other authorities for identification of constructions made after 16th day of June, 1992.

(65) Clause 11 of the proposed Bill deals with powers of the Central Government to make rules in respect of categories of ancient monuments and archaeological sites and remains, (ca) manner of making application for grant of permission, (cb) category of applications in respect of permission which may be granted and applications which shall be referred to the 'Authority', (cc) other matters including heritage controls, (cd) preparation of site plans, (ce) salaries and allowances payable to whole, time Chairperson and members or fees or allowances payable to part-time members of the 'Authority', (cf) the form and time at which the 'Authority' shall prepare annual report, (cg) and form and manner in which the 'Competent Authority' shall furnish information to the Central Government.

(66) Clause 12 of this proposed Bill deals with validation of action taken by the Central Government under notification No. S.O. 1764, dated 16th June, 1992. Some minor modifications have been made in this clause.

(67) Clause 13 of the proposed Bill deals with repeals and savings of the Ordinance.

ANNEXURE

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

(24 OF 1958)

* * * * *

30. (1) Whoever— Penalties

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

(ii) being the owner or occupier of a protected monument, contravenes an order made under sub-section (1) of section 9 or under sub-section (1) of section 10, or

(iii) removes from a protected monument any sculpture, carving, image, basrelief, inscription, or other like object, or

(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 fine which may extend to five thousand rupees, or with both.

(2) Any person who moves any antiquity in contravention of a notification issued under sub-section (1) of section 25 shall be punishable with fine which may extend to five thousand rupees; and the Court convicting a person of any such contravention may by order direct such person to restore the antiquity to the place from which it was moved.

* * * * *

LOK SABHA

A
BILL

further to amend the Ancient Monuments and Archaeological Sites and Remains Act, 1958
and to make provision for validation of certain actions taken by the Central Government
under the said Act.

(Dr. Manmohan Singh, Prime Minister)