



PARLIAMENT OF INDIA
RAJYA SABHA

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**DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE
ON TRANSPORT, TOURISM & CULTURE**

ONE HUNDRED AND FIFTIETH REPORT

ON

THE NATIONAL COMMISSION FOR HERITAGE SITES BILL, 2009

**(PRESENTED TO THE RAJYA SABHA ON 23.11.2009)
(LAID ON THE TABLE OF THE LOK SABHA ON 23.11.2009)**

**RAJYA SABHA SECRETARIAT
NEW DELHI**

NOVEMBER, 2009/ KARTIKA, 1931(SAKA)

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INTRODUCTION

I, the Chairman of the Department-related Parliamentary Standing Committee on Transport, Tourism and Culture, having been authorized by the Committee to present on its behalf, do hereby present this One Hundred and Fiftieth Report of the Committee on the National Commission for Heritage Sites Bill, 2009.

2. The Bill was introduced in the Rajya Sabha on 26th February, 2009 in pursuance of rules related to the Department-related Parliamentary Standing Committees. The Hon'ble Chairman, Rajya Sabha referred the Bill to the Committee on the 1st September, 2009 for examination and report within three months.

3. The Committee took oral evidence of the Secretary and other officers of the Ministry of Culture at its meeting held on 15th September & 24th September, 2009. The Committee also heard the views of the representatives of INTACH and individual experts at its meeting held on 24th September, 2009. The Committee considered the draft report on the subject and adopted the same on the 13th November, 2009.

4. The Committee wishes to express its thanks to the Secretary and other officers of the Ministry of Culture for the assistance and inputs provided during deliberations on the provisions of the Bill. The Committee also acknowledges the contribution of representatives of INTACH and individuals who submitted their valuable suggestions on the provisions of the Bill.

NEW DELHI
November 13, 2009
Kartika 4, 1931 (Saka

SITARAM YECHURY
Chairman,
Department-related Parliamentary Standing
Committee on Transport, Tourism & Culture.

REPORT

The National Commission for Heritage Sites Bill, 2009 was introduced in the Rajya Sabha on 26 February, 2009. On 1st September, 2009, the Hon'ble Chairman, Rajya Sabha, in consultation with the Hon'ble Speaker, Lok Sabha referred the Bill to the Committee for examination and Report. Accordingly, the Committee examined the Bill and finalised the Report, after hearing views of the various experts and the nodal Ministry *i.e.* the Ministry of Culture.

2. The salient features of the National Commission for Heritage Sites Bill, 2009 (*Annexure-I*) are given in the succeeding paragraphs.

2.1 Heritage Sites are cultural assets of immense value which provide identity to the community and the society and link its past to the future. Preservation and protection of heritage sites is, therefore, an exceptional necessity. In order to ensure that the international community pursues this objective, the United Nations Educational, Scientific and Cultural Organisation adopted the World Heritage Convention in its General Conference on 16 November, 1972 (*Annexure-II*). India has ratified this convention on 14 November, 1977. Article 5 of this Convention, *inter alia*, casts certain obligations on each State Party to ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage Sites situated on its territory and to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of heritages.

2.2 The Ancient Monuments and Archeological Sites and Remains Act, 1958 enacted by Parliament and various similar legislations enacted by State Legislatures for the purpose of protection and preservation of heritage sites do not fully meet obligations cast by the World Heritage Convention 1972.

2.3 In fact, the said Ancient Monuments and Archeological Sites and Remains Act empowers the Central Government to declare only such ancient monuments, archaeological sites and remains which are in existence for not less than one hundred years to be of national importance. The Archaeological Survey of India has brought about 3675 monuments and sites under the purview of the said Act for protection. However, these numbers constitute a very small fraction of the total number of ancient and heritage monuments in the country. The State Governments have also got their identical legislations and all the State Governments put together, are not protecting more than 4000 monuments. So, both, Centre and State Governments, put together are only protecting about 8,000 monuments and sites, whereas the number of unprotected monuments and sites may be much more about two lakhs. This number may still go up about which we do not have any definite figure.

2.4 Moreover, the present legislations, Central and State, do not extend to modern architectures of heritage value. As such a large number of heritage monuments both historical as well as contemporary fall outside the ambit of the said Act. Similarly, various Central and State legislations for conservation and protection of forests and environment cover a small fraction of the total number of natural heritages. The concept of 'cultural' and 'natural' heritage and the scope for their preservation and

protection is very narrow and limited in the existing legislations as compared to the conceptual framework in which the World Heritage Centre of UNESCO considers proposals for inscription as World Heritage Sites. It is, in fact, much wider encompassing various facets of heritages including cultural (ancient as well as modern) and natural heritages. In other words, these aspects are provided in none of our legislations, relating to archaeology, forest and environment.

2.5 Besides, various legislations enacted by State Legislatures have adopted different practices for preservation of cultural as well as natural heritages which are at variance with not only each other but also with the central legislations. As such, there is no uniformity with regard to legislative measures as well as actual practices for protection and conservation of built heritage.

2.6 Thus, there is a need to provide for an institutional mechanism under a central legislation which would take a holistic view of protection and preservation of heritage sites in the broadest possible conceptual framework; provide for a uniform legislative framework and practices in the area; encompass the entire universe of heritage sites in one way or the other including those which, at present, are outside the scope of existing legislations; and thus fulfill our obligations under the UNESCO's World Heritage Convention of 1972.

Accordingly, the Bill proposes to provide for the following matters, namely:—

- (i) to empower the Central Government to notify heritage sites for being entered in the Heritage Sites Roster maintained by the Commission;
- (ii) constitution of the National Commission for Heritage Sites consisting of a Chairperson, seven members and a Member-Secretary;
- (iii) functions of the National Commission of Heritage Sites;
- (iv) power of the Commission to issue directions;
- (v) imposition of fine of ten lakh rupees for contravention of directions so issued; and
- (vi) power of the Central Government to issue directions.

3. The Department-related Parliamentary Committee on Transport, Tourism and Culture had held discussions, apart from the Secretary, Ministry of Culture, with some historians, experts and organizations working in the related fields, before finalizing its views and recommendations. For example, the Committee had heard the views of the officials of the Ministry of Culture on the provisions of the Bill on 15th September, 2009. It also heard the views of the Secretary, INTACH and some individual experts on 24th September, 2009.

4. Clause 3 of the Bill seeks to empower the Central Government to notify heritage sites. Also Clause 17(1) of the Bill vests power in National Commission for Heritage Sites to recommend, lay down standards and more so, issue directions to the

States in different regards. Members of the Committee expressed their concern about its possible implications to the States' autonomy. Despite assurance by the Ministry of Culture, of having already consulted the States, the Committee decided to write to all the Chief Ministries of the States and Union Territories, in order to ascertain their views and suggestions in the matter.

5. The Ministry of Culture informed the Committee that the rationale behind the new legislation was to put a mechanism in place to ensure that effective and active measures were taken for the protection, conservation and presentation of the cultural and natural heritage situated on its territory, by taking appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage.

6. During evidence, the DG, ASI stated that the Government of India had launched a National Mission on Monuments and Antiquities, about two-and-a-half years ago to document all the monuments, sites, etc., whether protected by the Central Government or by the State Governments or unprotected. The reason for this exercise was that due to massive urbanisation taking place all over the country, the monuments and lands adjacent to them were coming under severe threat of being illegally occupied. In the absence of any adequate legal and other powers, a number of problems were being faced in protecting these monuments.

7. The Committee was informed that India ratified the Conventions concerning the Protection of the World Cultural and National Heritage 1972, in the year 1977. Article 5 of the World Heritage Convention specifically requires the State parties to take effective and active measures for the protection, conservation and presentation for the cultural and natural heritage.

8. The Committee is surprised to note that India ratified the Convention concerning the Protection of the World Cultural and National Heritage 1972, in the year 1977 and the Government did not take any actions to bring forth a suitable legislation under the Article 5 of the Convention for the last 32 years. This delay, the Committee feels, amounts not only to ignoring the spirit of international convention but also not being able to conserve and protect our valuable heritage sites in the country. In the meantime, number of heritage sites, protected either by the ASI or the State Archaeology Departments, or the unprotected ones, were encroached upon, demolished or vanished. The Committee expresses its concern over such an approach to protecting and preserving nation's cultural assets and heritage sites, which provide national identity and are bridge between the past and the future.

Clause 2

9. Clause 2 defines *inter-alia* various kinds of heritage sites for the purpose of the Bill. The representative of INTACH submitted that the definition of 'natural heritage site' given in Clause 2 was not comprehensive. They submitted that there were various eco systems which were known as natural heritage sites. They emphasized that terrestrial or aquatic sites or features, including riverine, wetland, coastal or marine areas, along with their varied biota, processes and occurrences, that were essentially

nature's creation and/or had ecological, scientific, cultural, spiritual or aesthetic significance for the present and future generations, and deserved conservation action, and they should be included in the definition of natural heritage sites as defined in the Bill. **The Committee agrees in principle, with this suggestion and recommends that suitable insertions be made in Clause 2 appropriately to include the eco systems enumerated above, in the definitions of Natural Heritage Sites.**

10. The representative of INTACH submitted before the Committee that the Cantonment Boards Act, 2006, provided for making regulations for protection of heritage sites, etc. situated in their area. But, neither such regulation had been framed nor do they allow any inspection, etc. of the heritage sites located in the cantonment areas. Therefore, the representatives of INTACH suggested that in clause 2(c), definition of 'heritage site', may cover the heritage monuments and sites which come in the cantonment areas as it was difficult to get information about them. The Committee notes the suggestion for amending the Clause 2(c) with a view to ensure that heritage sites located in the area under the control of cantonment boards were also given access to the agencies engaged in the conservation, protection, etc. of heritage sites. **The Committee, therefore, directs the Ministry of Culture to take it up with the concerned Ministry to see that the necessary regulation as required under the Cantonment Boards Act was framed, if it has not been done so far. The Committee is of the view that making suitable amendment/additions for this purpose in the Clause 2 (c) needs to be considered seriously.**

11. **The Committee also finds that in the Bill, the word 'roster' has been used wherein the description of heritage sites will be maintained. The Committee is not clear as to why the word 'roster' has been used there. The Committee recommends that the word 'roster' may be replaced with the word 'register' and the relevant clause of the Bill may be amended accordingly.**

Clause 3

12. Clause 3 states that the Central Government may, keeping in view the national importance of any heritage sites, notify such heritage sites and enter the description of such sites in the 'heritage sites roster' maintained by the Commission.

13. **The Committee notes that Clause 3 is silent about the manner of notifying the heritage sites. Also, Clause 24 which provides for rule-making powers, does not talk of making of rules about the manner of notification of heritage sites. The absence of a procedure regarding notification of the heritage sites can lead to several complications. It may also cause a sense of insecurity, particularly amongst the individual owners of the heritage sites or local bodies or State Governments. In this connection, the Government of Tripura has suggested the following amendment:-**

In Clause 3 of Chapter-II, after words 'Central Government may' the words 'in consultation with concerned State Government' be added.

14. **The Committee endorses this suggestion and is of the view that there is a need to do away the confusion about the notification of heritage sites by prescribing the procedure for this purpose in the Bill itself.**

15. The Committee is aware that the Ancient Monuments and Archaeological Sites and Remains (AMASR) Act, 1958 enacted by the Central Government prescribed the procedure of notification of monuments of national importance. The Committee does not know whether the same procedure will be adopted under this legislation also. If not, the position be made clear and specified in the Bill itself to avoid possible confusion and duplication in this respect.

16. Clause 3 speaks of notification of heritage sites of national importance. However, Clause 2 defines the heritage sites of 'outstanding value' and nowhere it describes the heritage sites of national importance. It appears that the term 'national importance' has been used instead of 'outstanding value' in Clause 3, inadvertently. Accordingly, the Committee recommends that the term 'national importance' may be replaced with the term 'outstanding value' in Clause 3.

Clause 5

17. Clause 5 provides for the qualifications of the persons to be appointed as Chairperson and Members of the National Commission for Heritage Sites.

18. The provisions of Clause 5 were discussed in detail with the representatives of INTACH as well as with the historians and experts. Some of the experts were very critical of including the term 'public administration' as one of the areas of knowledge and experience from which a person can be appointed as the Chairperson and Members of the National Commission for Heritage Sites. General view put forth was that Commission must be a professional body, and that having 'public administration' as a ground for this purpose, possibility of the Commission being converted as a forum for accommodating retired bureaucrats and civil servants cannot be ruled out. They suggested that at least **five**, out of seven members of the Commission, should be purely professionals not only **three** as provided in Proviso to Clause 5 (b). **The Committee is also of the view that experience in 'Public administration' does not appear to be very relevant as far as appointing the Chairperson and Members of the Commission is concerned. The Committee is of the view that the guiding principle should be the contribution of a person to the conservation and preservation of natural and cultural heritage. Removing the words 'public administration' would not preclude the possibility of a retired civil servant who has made his mark in the relevant areas during his career, to be appointed as its Chairperson/members. The Committee, therefore, recommends that the term 'public administration' appearing in Clause 5 may be deleted.**

19. It was submitted before the Committee that for the appointment of the Chairperson and Members of the Commission, the restrictions of 25 years and 20 years of experience respectively was not warranted, as it would restrict the choice to a great extent. The Committee finds merit in this suggestion and feels that the limits of 25 and 20 years of experience would disqualify the persons with lesser experience but eminently suited for the assignments. The Commission would thus be deprived of the services of the persons with training in modern practices and methods in heritage conservation, protection, etc. The Committee, therefore,

recommends that the Clause 5 (a) (i) & 5 (b) may be amended to bring down age restriction suitably.

20. The Committee notes that the Central Government will nominate the Chairperson and Members of the Commission. The Committee is, however, of the view that in order to ensure fair play and transparency, selection of the Chairperson and members of the Commission be done by a Search Committee.

21. The Committee also notes that in the entire framework proposed in the Bill, its interface with ASI has not been clearly brought out. It is nowhere found in the Bill. ASI has been a premier organisation serving the country for about 150 years that has done excellent work in maintaining and preserving our ancient monuments and archaeological sites. It carries long experience in different methods and practices on which the proposed Commission would make recommendation or lay guidelines, etc. It would, therefore, certainly be in the interest of the nation and for an effective and smooth functioning of the Commission that this relationship is made clear in the Bill. The Committee also feels that the DG ASI or his representative from ASI may also be associated with the Commission appropriately.

Clause 6

22. Clause 6 deals in terms of office(s) for Chairperson and Members of Commission.

23. The Committee notes that the term of the Chairperson of the Commission has been restricted to five years with no mention about his/her re-appointment, whereas, in the case of members, it has been provided that they will be eligible for a second term. If the intention is not to give a second term to a Chairperson, it should have been mentioned there. The Committee, however, feels that if the Chairperson is well-qualified, he should be eligible for another term.

24. As regards the age limit of 65 years, an expert suggested that in a body like National Commission for Heritage Sites, this upper age limit would not always work as there were number of internationally acclaimed historians, archaeologists and other experts who may be well above 65 years of age and still active. The Committee agrees to the above suggestions and feels that if the Chairperson was well qualified and active, there is no harm if given another term. The Committee, therefore, is of the view that age limit of 65 years may be increased, so that the Commission may have the benefit of such people in the field. The Committee therefore recommends that the Clause 6 may be amended accordingly.

Clause 7

25. Clause 7 prescribed the procedure for filling up of casual vacancies in the Commission. Committee notes that under this Clause, any person to fill the casual vacancy, will hold the office for the remainder period only. The Committee is of the view that when a term of five years has been prescribed for the Chairperson

and Members, then there appears little justification for prescribing the limit of the 'remainder period' to fill a casual vacancy. The Committee recommends that the above limit prescribed to fill the casual vacancy may be removed and Clause 7 may be amended accordingly.

Clause 10

26. Clause 10 provides that the Commission may, for efficient discharge of its functions, constitute such Committees, consisting of such number of persons and in such manner as may be prescribed. Also the Clause 24(2)(b) states that Central Government may make rules for the constitution of the Committees under Section 10. The Committee noted that nowhere in the Bill the details regarding composition and functions of the Committee has been provided.

27. In this respect, the Government of Tripura has suggested that the States should be represented in these Committees to be constituted under Clause 10.

28. The Committee feels that this suggestion of providing due representation to the States in the Committees deserves to be considered carefully.

Clause 14

29. Clause 14 (2) provides that the Commission shall regulate its own procedure. The Committee, however, notes that nowhere in the Bill it has been prescribed as to what will be the guiding principle of procedure based on which the Commission shall regulate its functioning. The absence of laid down procedure may result in arbitrariness in the functioning of the Commission. The Committee, therefore, recommends that the procedure on the basis of which the Commission will regulate its functioning may be provided in Clause 14 itself or in Clause 24 providing for the rules to be framed under the Bill.

Clause 16

30. Clause 16 provides functions of the proposed National Heritage Commission. Clause 16 (e) provides to identify and recommend to the Central Government and State Government suitable measures and methods for conserving and integrating intangible cultural systems with the conservation and management of the heritage sites. The Committee was informed that the National Commission for Heritage Sites Bill basically would focus only on the tangible cultural heritage sites; there was a separate Convention of UNESCO of 2003 which dealt with intangible cultural heritage sites; and there would be a separate legislation for that. The tangible and intangible heritage, although they were integrated/ required different treatment. As regards intangible cultural heritage sites, the kind of documentation required, the way it was proceeding on the representative list and other things were an entirely new area on which the Ministry of Culture and various organisations were still working. The officials of the Ministry of Culture stated that it will take some time before a structure emerged regarding making a separate legal provision or whether the current legislations will cover this aspect also. All these aspects were being worked out.

31. Now, this creates confusion in so far as coverage under this Bill of intangible heritage is concerned. If these were not to be covered, why have these been included here in Clause 16 (e)? The Committee feels that position in this regard needs to be amply clarified and confusion removed.

32. Clause 16(b) states that the Commission would lay down standards for development of scientific and technical institutions and courses offered by them for preservation and presentation of heritage sites. Also, under Clause 16(d) Commission is to conduct studies and research for identification and categorization of heritage sites. However, no specific details have been provided by the Government about the scientific and technical institutions for which the Commission is supposed to lay down the standards for their development. Whether the Government have plans to set up new institution(s) for the purpose or the Commission will coordinate/interact with the existing institutions through which the studies and research for identification of heritage sites will be conducted. There are number of institutes and universities which conduct studies and research in the field of archaeology and offer courses for preservation, conservation and protection of monuments. In order to ensure that there is no duplication of efforts in this regard, there is need to identify the existing institutions and universities which can be developed for these purposes. The proposed Commission may take the benefit of expertise and infrastructure available there for conducting the studies and research in these regards.

33. The Committee is of the view that with our immense cultural, linguistic, archaeological, geological and environmental diversities, the Commission should be developed as a hub and a centre of excellence of all conservation-related activities in the country. It can also work as a national coordinator for conservation. The Committee recommends that it should be ensured that the Commission does not add to the existing institutions working at cross purposes with other agencies in these fields.

34. The Committee is of the view that aims of the National Commission should also be to spread national heritage conscious and promote awareness about the importance and need for protection of heritage sites and monuments.

35. The Committee notes the various functions assigned to the Commission. However, no institutional support for conservation and preservation has been designated. No standardization of various activities or its processes has been provided.

36. The Committee hopes that the Commission would not function as a supervisor or overseer but as a facilitator and mentor for organisations working in the field of preserving our diverse environmental, archaeological and natural heritage.

Clause 17

37. Under Clause 17(1) the Commission has been vested with the power to issue directions to any person who is the owner of any heritage site to provide access to such sites for the purpose of its maintenance and preservation, etc. From perusal of the Bill,

it is not clear as to what would constitute the term 'person' appearing in Clause 17(1), to whom the Commission will issue directions. The Clause is silent about the directions to be issued when a heritage site is under the control of some institution, organisation, Municipal or local bodies, particularly when it is the case of a State. In this connection, the Committee was informed that the Ministry of Finance had submitted that the Bill vests sweeping power to the Commission to issue directions which may impinge upon the powers and duties of the State Governments. In response thereto, the Ministry of Culture have stated that the Ministry of Law had been consulted in the matter who had opined that proposed legislation fell within the preview of Article 253 of the Constitution which empowered the Parliament to legislate on the subject-matter of the Bill for the whole of the territory of India. The Ministry of Culture have further submitted that the power of the Commission to issue direction was envisaged only in extreme situation wherein the opinion of the Commission on any heritage site was likely to be endangered, damaged or destroyed by its owner or controller. Since most of the functions of the Commission were advisory in nature, no conflict was envisaged between the Central and State agencies, it was argued.

38. The Committee does not agree with the views of the Ministry of Culture that most of the functions of the Commission are advisory in nature and, therefore, no conflict is envisaged between the Central and State agencies. When the Clause 17 clearly talks of power of the Commission to issue directions to the owner of the heritage sites, it may, according to the Committee, lead to dispute between Centre and State agencies when the owner of the heritage site is a State Government, though it may happen rarely. The Ministry of Culture has heavily depended upon the advice of the Ministry of Law who has opined that Bill falls under Article 253 of the Constitution and, therefore, there may not be any cause of dispute between the Central and State agencies. The Committee is of the view that possibility of a conflict between the Central and State agencies can be avoided, if a transparent procedure of notification of heritage sites were provided in the Bill under Clause 3. The Committee is of the view that once the process of notification of heritage sites is completed and a site formed part of the heritage site roster, there may be little possibility of non-compliance of directions of the Commission for conservation, preservation or maintenance of the heritage site.

39. A number of heritage sites in the urban areas, are getting demolished by those agencies that are implementing public sector projects *i.e.* roads, tourism, and infrastructure. Therefore, the committee recommends that para 17(1) may be amended so that Commission may issue directions to any person, agencies which are implementing such public sector projects, any institution, organization, municipal or local body which is the owner of, or has, in its possession or control, any heritage site, to provide access to such site for the purpose of its maintenance and preservation or to desist from doing any act, which in the opinion of the commission is likely to endanger, damage or destroy such site, and the person against whom direction is issued shall comply with the direction so issued.

40. The Committee also discussed the right of an individual who has been given direction under Clause 17 (1). It has, the Committee feels, potential for creating misgivings in the mind of the owners regarding their liabilities and losses

in the process and its use thereafter. If the heritage property is already being used for commercial purposes in residential area, they can be allowed to use even after the heritage structure has been maintained.

41. The Committee adopts the remaining Clauses of the Bill without any amendments.

42. The enacting formula and the title are adopted without any changes.

43. The Committee recommends that the Bill may be passed after incorporating the amendments/additions suggested by it.

44. Although the Committee has examined the provisions of the Bill and given its views/recommendations on different aspects, it is of the considered opinion that the Bill seeks to address only a part of the problem bedeviling entire gamut of identification, protection, preservation, etc. of our valuable national heritage, scattered all over the country. The proposed National Commission, being an advisory body may prove to be merely an addition to the plethora of agencies existing at different levels. The Committee has seen for itself that the demolition of Lal Mahal in Delhi was mainly due to lack of coordination, monitoring and regular interaction between the Union and State Governments and its agencies like ASI, State Archaeology Boards, local bodies, police and revenue authorities. Administrative mechanism required for ensuring protection of heritage sites are not there at every levels. ASI is greatly handicapped on account of manpower, resources and necessary legal powers, as a result of which, it is able to protect only 3675 monuments. State Governments put together are taking care of only about 4000 heritage sites, while there are estimated about two lakhs unprotected heritage sites in the country. There is a distinct lack of required effort at different levels in regard to identification, notification and preservation/protection of our heritage.

45. While under this Bill, the National Commission will have the power to notify the heritage sites, it does not provide any enabling agency and powers for protecting these sites. It appears that sole purpose behind bringing this Bill is to fulfill Government's obligation under World Convention on National Heritage. Under the Convention, perhaps many more legislations would be required to be enacted by the Government to fulfill the obligations imposed on the State Parties by it. In this situation, the Committee cannot but describe the present Bill as a half-hearted effort which distinctly lacks a holistic approach to tackle the problems. Ideally, the Government should have brought a comprehensive Bill fulfilling all the gaps that are existing and encountered in protecting and preserving our national heritage.

46. The Committee would like the Ministry to submit a note with reasons on the recommendations/suggestions, which could not be incorporated in the Bill.

GENERAL RECOMMENDATIONS

47. India being a vast country with immense cultural and natural heritage, a proper monitoring of all these may not be feasible with a single centered entity. The Committee, therefore, is of the view that there should be ample support from different agencies from various regions of the country to assist the commission for its smooth functioning. Monitoring committees/authorities for the conservation and maintenance of the monuments need to be provided. Particularly to handle the problems of encroachment of monuments and sites, the cooperation of the States is crucial. In this connection the representatives of the Ministry of Culture informed that they had discussion with the respective State Governments, and various kinds of formulae are being worked out to take care of the encroachment including the resettlement and rehabilitation aspect of the encroachers. In the State of Karnataka, the State Government has worked out a rehabilitation and resettlement plan by taking into consideration the concerned local people who have encroached on the monuments etc. They agreed to relocate it, the State Government has now approached for sharing the expenses by the Government of India and the Government of Karnataka on a 50:50 basis. The Committee feels that since in the removal of encroachment, the major role has to be played by the State Government, therefore, their stake has to be properly recognized.

48. The Committee further feels that Headquarters of the Commission may be kept at a place other than Delhi, as it is already overburdened and finding a suitable place of accommodating the Commission will be a cumbersome job. The Committee, therefore, recommends that the Commission may be located out of Delhi, a place which is the hub of heritage sites.

49. There must be provision in the Bill for creating a data-bank on all our cultural and natural sites. The data bank may be created by sending questionnaire to the people at various levels and the same may be verified by taking the help of students and teachers of that locality. The questionnaire may be prepared with the help of professional and other experts who can help in tracing the facts about such sites. Eminent people of the locality/senior citizens/panchayats may also assist in the project of compiling and verifying the data.

50. As regards encroachment on such sites, the Committee found that there was no policy in this regard. Further no guidelines on how to reclaim those sites are provided in the Act. In the absence of those guidelines reclamation of heritage sites under encroachment will not be possible.

OBSERVATION/CONCLUSIONS/RECOMMENDATIONS- AT A GLANCE

The Committee is surprised to note that India ratified the Convention concerning the Protection of the World Cultural and National Heritage 1972, in the year 1977 and the Government did not take any actions to bring forth a suitable legislation under the Article 5 of the Convention for the last 32 years. This delay, the Committee feels, amounts not only to ignoring the spirit of international convention but also not being able to conserve and protect our valuable heritage sites in the country. In the meantime, number of heritage sites, protected either by the ASI or the State Archaeology Departments, or the unprotected ones, were encroached upon, demolished or vanished. The Committee expresses its concern over such an approach to protecting and preserving nation's cultural assets and heritage sites, which provide national identity and are bridge between the past and the future. (Para: 8)

The Committee agrees in principle, with the suggestion that terrestrial or aquatic sites or features, including riverine, wetland, coastal or marine areas, which had ecological, scientific, cultural, spiritual and aesthetic significance for the present and future generations, be included in the definition of natural heritage sites as defined in the Bill and recommends that suitable insertions be made in Clause 2 appropriately to include the eco systems enumerated above, in the definitions of Natural Heritage Sites. (Para: 9)

The Committee, therefore, directs the Ministry of Culture to take it up with the concerned Ministry to see that the necessary regulation as required under the Cantonment Boards Act was framed, if it has not been done so far. The Committee is of the view that making suitable amendment/additions for this purpose in the Clause 2 (c) needs to be considered seriously. (Para: 10)

The Committee also finds that in the Bill, the word 'roster' has been used wherein the description of heritage sites will be maintained. The Committee is not clear as to why the word 'roster' has been used there. The Committee recommends that the word 'roster' may be replaced with the word 'register' and the relevant Clause of the Bill may be amended accordingly. (Para: 11)

The Committee notes that Clause 3 is silent about the manner of notifying the heritage sites. Also, Clause 24 which provides for rule-making powers, does not talk of making of rules about the manner of notification of heritage sites. The absence of a procedure regarding notification of the heritage sites can lead to several complications. It may also cause a sense of insecurity, particularly amongst the individual owners of the heritage sites or local bodies or State Governments. In this connection, the Government of Tripura has suggested the following amendment:–

In Clause 3 of Chapter-II, after words 'Central Government may' the words 'in consultation with concerned State Government' be added. (Para: 13)

The Committee endorses this suggestion and is of the view that there is a need to do away the confusion about the notification of heritage sites by prescribing the procedure for this purpose in the Bill itself. (Para: 14)

The Committee is aware that the Ancient Monuments and Archaeological Sites and Remains (AMASR) Act, 1958 enacted by the Central Government prescribed the procedure of notification of monuments of national importance. The Committee does not know whether the same procedure will be adopted under this legislation also. If not, the position be made clear and specified in the Bill itself to avoid possible confusion and duplication in this respect. (Para: 15)

Clause 3 speaks of notification of heritage sites of national importance. However, Clause 2 defines the heritage sites of 'outstanding value' and nowhere it describes the heritage sites of national importance. It appears that the term 'national importance' has been used instead of 'outstanding value' in Clause 3, inadvertently. Accordingly, the Committee recommends that the term 'national importance' may be replaced with the term 'outstanding value' in Clause 3.

(Para: 16)

The Committee is also of the view that experience in 'Public administration' does not appear to be very relevant as far as appointing the Chairperson and Members of the Commission is concerned. The Committee is of the view that the guiding principle should be the contribution of a person to the conservation and preservation of natural and cultural heritage. Removing the words 'public administration' would not preclude the possibility of a retired civil servant who has made his mark in the relevant areas during his career, to be appointed as its Chairperson/members. The Committee, therefore, recommends that the term 'public administration' appearing in Clause 5 may be deleted.

(Para: 18)

It was submitted before the Committee that for the appointment of the Chairperson and Members of the Commission, the restrictions of 25 years and 20 years of experience respectively was not warranted, as it would restrict the choice to a great extent. The Committee finds merit in this suggestion and feels that the limits of 25 and 20 years of experience would disqualify the persons with lesser experience but eminently suited for the assignments. The Commission would thus be deprived of the services of the persons with training in modern practices and methods in heritage conservation, protection, etc. The Committee, therefore, recommends that the Clause 5 (a) (i) & 5 (b) may be amended to bring down age restriction suitably.

(Para: 19)

The Committee notes that the Central Government will nominate the Chairperson and Members of the Commission. The Committee is, however, of the view that in order to ensure fair play and transparency, selection of the Chairperson and members of the Commission be done by a Search Committee.

(Para: 20)

The Committee also notes that in the entire framework proposed in the Bill, its interface with ASI has not been clearly brought out. It is nowhere found in the Bill. ASI has been a premier organisation serving the country for about 150 years that has done excellent work in maintaining and preserving our ancient monuments and archaeological sites. It carries long experience in different methods and practices on which the proposed Commission would make recommendation or lay guidelines, etc. It would, therefore, certainly be in the interest of the nation and for an effective and smooth functioning of the Commission that this relationship is made clear in the Bill. The Committee also feels that the DG ASI or his representative from ASI may also be associated with the Commission appropriately. (Para: 21)

The Committee notes that the term of the Chairperson of the Commission has been restricted to five years with no mention about his/her re-appointment, whereas, in the case of members, it has been provided that they will be eligible for a second term. If the intention is not to give a second term to a Chairperson, it should have been mentioned there. The Committee, however, feels that if the Chairperson is well-qualified, he should be eligible for another term.

(Para: 23)

As regards the age limit of 65 years, an expert suggested that in a body like National Commission for Heritage Sites, this upper age limit would not always work as there were number of internationally acclaimed historians, archaeologists and other experts who may be well above 65 years of age and still active. The Committee agrees to the above suggestions and feels that if the Chairperson was well qualified and active, there is no harm if given another term. The Committee, therefore, is of the view that age limit of 65 years may be increased, so that the Commission may have the benefit of such people in the field. The Committee therefore recommends that the Clause 6 may be amended accordingly.

(Para: 24)

Clause 7 prescribed the procedure for filling up of casual vacancies in the Commission. Committee notes that under this Clause, any person to fill the casual vacancy, will hold the office for the remainder period only. The Committee is of the view that when a term of five years has been prescribed for the Chairperson and Members, then there appears little justification for prescribing the limit of the 'remainder period' to fill a casual vacancy. The Committee recommends that the above limit prescribed to fill the casual vacancy may be removed and Clause 7 may be amended accordingly. (Para: 25)

The Committee feels that suggestion of providing due representation to the States in the Committees deserves to be considered carefully. (Para: 28)

The Committee, notes that nowhere in the Bill it has been prescribed as to what will be the guiding principle of procedure based on which the Commission shall regulate its functioning. The absence of laid down procedure may result in arbitrariness in the functioning of the Commission. The Committee, therefore, recommends that the procedure on the basis of which the Commission will regulate its functioning may be provided in Clause 14 itself or in Clause 24 providing for the rules to be framed under the Bill. (Para: 29)

There is confusion in so far as coverage under this Bill of intangible heritage is concerned. If these were not to be covered, why have these been included here in Clause 16 (e)? The Committee feels that position in this regard needs to be amply clarified and confusion removed. (Para: 31)

No specific details have been provided by the Government about the scientific and technical institutions for which the Commission is supposed to lay down the standards for their development. Whether the Government have plans to set up new institution(s) for the purpose or the Commission will coordinate/interact with the existing institutions through which the studies and research for identification of heritage sites will be conducted. There are number of institutes and universities which conduct studies and research in the field of archaeology and offer courses for preservation, conservation and protection of monuments. In order to ensure that there is no duplication of efforts in this regard, there is need to identify the existing institutions and universities which can be developed for these purposes. The proposed Commission may take the benefit of expertise and infrastructure available there for conducting the studies and research in these regards. (Para: 32)

The Committee is of the view that with our immense cultural, linguistic, archaeological, geological and environmental diversities, the Commission should be developed as a hub and a centre of excellence of all conservation-related activities in the country. It can also work as a national coordinator for conservation. The Committee recommends that it should be ensured that the Commission does not add to the existing institutions working at cross purposes with other agencies in these fields. (Para: 33)

The Committee is of the view that aims of the National Commission should also be to spread national heritage conscious and promote awareness about the importance and need for protection of heritage sites and monuments. (Para: 34)

The Committee notes the various functions assigned to the Commission. However, no institutional support for conservation and preservation has been designated. No standardization of various activities or its processes has been provided. (Para: 35)

The Committee hopes that the Commission would not function as a supervisor or overseer but as a facilitator and mentor for organisations working in

the field of preserving our diverse environmental, archaeological and natural heritage. (Para: 36)

The Committee does not agree with the views of the Ministry of Culture that most of the functions of the Commission are advisory in nature and, therefore, no conflict is envisaged between the Central and State agencies. When the Clause 17 clearly talks of power of the Commission to issue directions to the owner of the heritage sites, it may, according to the Committee, lead to dispute between Centre and State agencies when the owner of the heritage site is a State Government, though it may happen rarely. The Ministry of Culture has heavily depended upon the advice of the Ministry of Law who has opined that Bill falls under Article 253 of the Constitution and, therefore, there may not be any cause of dispute between the Central and State agencies. The Committee is of the view that possibility of a conflict between the Central and State agencies can be avoided, if a transparent procedure of notification of heritage sites were provided in the Bill under Clause 3. The Committee is of the view that once the process of notification of heritage sites is completed and a site formed part of the heritage site roster, there may be little possibility of non-compliance of directions of the Commission for conservation, preservation or maintenance of the heritage site.

(Para: 38)

A number of heritage sites in the urban areas, are getting demolished by those agencies that are implementing public sector projects *i.e.* roads, tourism, and infrastructure. Therefore, the committee recommends that para 17(1) may be amended so that Commission may issue directions to any person, agencies which are implementing such public sector projects, any institution, organization, municipal or local body which is the owner of, or has, in its possession or control, any heritage site, to provide access to such site for the purpose of its maintenance and preservation or to desist from doing any act, which in the opinion of the commission is likely to endanger, damage or destroy such site, and the person against whom direction is issued shall comply with the direction so issued.

(Para: 39)

The Committee also discussed the right of an individual who has been given direction under Clause 17 (1). It has, the Committee feels, potential for creating misgivings in the mind of the owners regarding their liabilities and losses in the process and its use thereafter. If the heritage property is already being used for commercial purposes in residential area, they can be allowed to use even after the heritage structure has been maintained.

(Para: 40)

Although the Committee has examined the provisions of the Bill and given its views/recommendations on different aspects, it is of the considered opinion that the Bill seeks to address only a part of the problem bedeviling entire gamut of identification, protection, preservation, etc. of our valuable national heritage, scattered all over the country. The proposed National Commission, being an advisory body may prove to be merely an addition to the plethora of agencies

existing at different levels. The Committee has seen for itself that the demolition of Lal Mahal in Delhi was mainly due to lack of coordination, monitoring and regular interaction between the Union and State Governments and its agencies like ASI, State Archaeology Boards, local bodies, police and revenue authorities. Administrative mechanism required for ensuring protection of heritage sites are not there at every levels. ASI is greatly handicapped on account of manpower, resources and necessary legal powers, as a result of which, it is able to protect only 3675 monuments. State Governments put together are taking care of only about 4000 heritage sites, while there are estimated about two lakhs unprotected heritage sites in the country. There is a distinct lack of required effort at different levels in regard to identification, notification and preservation/protection of our heritage. (Para: 44)

While under this Bill, the National Commission will have the power to notify the heritage sites, it does not provide any enabling agency and powers for protecting these sites. It appears that sole purpose behind bringing this Bill is to fulfill Government's obligation under World Convention on National Heritage. Under the Convention, perhaps many more legislations would be required to be enacted by the Government to fulfill the obligations imposed on the State Parties by it. In this situation, the Committee cannot but describe the present Bill as a half-hearted effort with distinct lack a holistic approach to tackle the problems. Ideally, the Government should have brought a comprehensive Bill fulfilling all the gaps that are existing and encountered in protecting and preserving our national heritage. (Para: 45)

The Committee would like the Ministry to submit a note with reasons on the recommendations/suggestions, which could not be incorporated in the Bill.

(Para: 46)

India being a vast country with immense unnatural and natural heritage, a proper monitoring of all these may not be feasible with a single centered entity. The Committee, therefore, is of the view that there should be ample support from different agencies from various regions of the country to assist the commission for its smooth functioning. Monitoring committees/authorities for the conservation and maintenance of the monuments need to be provided. Particularly to handle the problems of encroachment of monuments and sites, the cooperation of the States is crucial. In this connection the representatives of the Ministry of Culture informed that they had discussion with the respective State Governments, and various kinds of formulae are being worked out to take care of the encroachment including the resettlement and rehabilitation aspect of the encroachers. In the State of Karnataka, the State Government has worked out a rehabilitation and resettlement plan by taking into consideration the concerned local people who have encroached on the monuments etc. They agreed to relocate it, the State Government has now approached for sharing the expenses by the Government of India and the Government of Karnataka on a 50:50 basis. The Committee feels that since in the removal of encroachment, the major

role has to be played by the State Government, therefore, their stake has to be properly recognized. (Para: 47)

The Committee further feels that Headquarters of the Commission may be kept at a place other than Delhi, as it is already overburdened and finding a suitable place of accommodating the Commission will be a cumbersome job. The Committee, therefore, recommends that the Commission may be located out of Delhi, a place which is the hub of heritage sites. (Para: 48)

There must be provision in the Bill for creating a data-bank on all our cultural and natural sites. The data bank may be created by sending questionnaire to the people at various levels and the same may be verified by taking the help of students and teachers of that locality. The questionnaire may be prepared with the help of professional and other experts who can help in tracing the facts about such sites. Eminent people of the locality/senior citizens/panchayats may also assist in the project of compiling and verifying the data. (Para: 49)

As regards encroachment on such sites, the Committee found that there was no policy in this regard. Further no guidelines on how to reclaim those sites are provided in the Act. In the absence of those guidelines reclamation of heritage sites under encroachment will not be possible. (Para: 50)
