

**A BRIEF NOTE ON THE SALIENT FEATURES OF THE ANCIENT  
MONUMENTS AND ARCHAEOLOGICAL SITES AND REMAINS  
(AMMENDMENT AND VALIDATION) ACT -2010**

1. The Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010 hereinafter referred to as the Amendment Act has been enacted 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. The Act has come into force (except sections 3, 5, 7 and 8 to 11) on the 23<sup>rd</sup> day of January, 2010 i.e. the date on which the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Ordinance, 2010 had been promulgated.
2. The limits of prohibited area and regulated area around the monuments, archaeological sites and remains declared by the Central Government as protected have been specified in the principal Act as 100 m and 200 m, respectively. The limits so fixed may be further extended on the basis of gradation and classification of the monuments, archaeological sites and remains to be done by the National Monument Authority, which is to be constituted by the Central Government by virtue of the Amendment in the principal Act.
3. The Authority shall have a full time Chairperson and five full time and five part-time members having proven experience and expertise from the fields of archaeology, town and country planning, architecture, heritage, conservation architecture or law with a tenure of three years. The function of the Authority shall be to recommend for gradation and classification of monuments and protected areas, oversee the working of Competent authorities, suggest measures for implantation of the provisions of the Act, consider impact of large-scale development projects, public projects and projects essential to the public proposed in regulated areas and make recommendations for grant of permission.
4. Henceforth, no permission for construction of any public projects or any other nature shall be granted in the prohibited areas of the protected monument and protected area. However, permission for repair and renovation could be granted by the Competent Authority, to be specified by the Central Government, on the recommendation of the National Monument Authority, subject to the condition that the building or structure is pre-1992 or permission for construction or reconstruction of such building or structure had been granted by the Archaeological Survey of India.
5. In respect of regulated area, the Competent Authority may grant permission for construction, reconstruction, repair and renovation on the basis of recommendation of the National Monument Authority duly taking note of heritage bye-laws, which shall be prepared in respect of each protected monument and protected area. The heritage bye-laws shall be formulated in consultation with INTACH and other expert heritage bodies by the Competent Authority on the basis of detailed site plans which would be prepared by the Archaeological Survey of India, involving experts and consultants.
6. The Amendment Act defines 'construction' which 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 publicity. [Section 2 (dc)]

Similarly, 'reconstruction' has also been defined as any erection of a structure or building to its pre-existing structure, having the same horizontal and vertical limits. [Section 2 (k)]

To avoid any ambiguity in interpretation, the Act has defined the term 'repair and renovation' which means alterations to a pre-existing structure or building, but shall not include 'construction' or 'reconstruction'. [Section 2 (m)]

7. The prohibited areas of the protected monuments or protected areas, declared as of national importance, has been defined by the Amendment Act, which means 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. There is also a provision in the Act to further extend the prohibited area beyond hundred metres having regard to the classification of any protected monument or protected area on the recommendation of 'National Monument Authority' by the Central Government. [Section 2 (ha) and 20A]

With this definition, the prohibited area has extent not only horizontally but also vertically and covers even below the surface.

8. The regulated area, according to the Amendment Act means every area, beginning at the limit of the prohibited area in respect of every ancient monument and archaeological site and remains, declared as of national importance under section 3 and 4 and extending to a distance of two hundred metres in all directions. This two hundred metres regulated area could further be extended having regard to the classification of any protected monument or protected area on the recommendation of 'National Monument Authority' by the Central Government. [Section 2 (l) and 20B]

With this definition, the regulated area has extent not only horizontally but also vertically and covers even below the surface.

9. The Act provides for undertaking survey of all prohibited areas and regulated areas by the ASI for the purpose of preparing detailed site plans within a time limit to be specified by the Central Government. Responsibility has also been given to the ASI to identify all constructions of whatever nature made on and after 16<sup>th</sup> June, 1992 in all prohibited and regulated areas and to submit a report from time to time to the Central Government. The ASI has been given authority under the Act to call for information from the local bodies and other authorities.

10. The Amendment Act provides that none other than an archaeological officer can carry out any construction in any prohibited area. This provision means that no construction activity can be taken up in the prohibited areas of the protected monuments and protected areas. The authority for undertaking construction activities in the prohibited area has been given to the archaeological officer keeping in view the requirements to enhance the visitors experience, which may require erection of structures like toilets, sculpture shed, museum, interpretation centre, publication counter, ticket booking office, water kiosk, small cafeteria, etc.

11. The Act provides that no permission, 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) Act, 2010 comes into force. After the enforcement of the Act, 2010, public work or project essential to the public or other constructions can not be carried out in the prohibited area. This provision, however, does not include 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. **[Section 2 (I) and 20B]**. This provision has barred all construction activities in the prohibited area to be taken up by all public bodies even if the purpose is related to public works or project essential to the public. There is no provision for grant of any relaxation in this regard by any authority.

12. Any person, who owns any building or structure, which existed in a prohibited area before the 16<sup>th</sup> 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. **[Section 20C (1)]**

After the enforcement of the Amendment Act, no owner or possessor of any building or structure or land falling in the prohibited area could be permitted for undertaking any construction or reconstruction. He may, however, undertake repair or renovation of the building or structure which existed prior to 16<sup>th</sup> June, 1992 or which had been constructed on the basis of permission granted by the Director General.

13. The Act provides for carrying out construction or re-construction or repair or renovation of such building or structure on such land, as the case may be, by any person, who owns or possesses any building or structure or land in any regulated area. The owner or possessor of any building or structure or land may make an application to the Competent Authority for carrying out construction or re-construction or repair or renovation, as the case may be. **[Section 20C (2)]**

14. The permissions for construction granted by the ASI after the 16<sup>th</sup> day of June, 1992 but ending before the date on which the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010 has come into force, in the regulated area in respect of such protected monument, shall be deemed to have been validly granted in accordance with the provisions of this Act. **[Section 20B]**

As per this provision the constructions carried out by any person in the regulated area without obtaining prior permission from the Director General is illegal and not valid.

15. The permissions for construction granted by the ASI after the 16<sup>th</sup> day of June, 1992 but ending before the date on which the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010, in 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. **[Section 20A (3)]**

16. The Act, however, provides that the permission for construction or re-construction of any building or structure granted in any prohibited area in pursuance of the notification of the Government of India in the Department of Culture (ASI) number S.o.1764, dated the 16<sup>th</sup> 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 20<sup>th</sup> July, 2006 (subsequently referred to as the Expert Advisory Committee in orders dated the 27<sup>th</sup> August, 2009 and the 5<sup>th</sup> May, 2009) shall not be considered valid if the permission had been granted subsequent to the completion of construction or re-construction of any building or structure. **[Section 20A (3)]** This provision has not validated the permissions granted by the Director-General ex-post-facto, which means that the buildings and structures so constructed unauthorizedly but regularized later would be treated as unauthorized and illegal.

17. The Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010, provides that the Central Government may specify, by notification in the Official Gazette, an officer not below the rank of Director of Archaeology or Commissioner of Archaeology of the Central or State Government, as the Competent Authority to perform functions under the Act. The Central Government has the powers to specify different Competent Authorities for the purpose of Sections 20C, 20D and 20E. **[Section 2 (db)]**

18. Henceforth, the authority to receive application for grant of permission for construction, reconstruction, repair or renovation in the prohibited areas or regulated areas has been vested with the Competent Authority, who shall be specified by the Central Government through a Gazette notification to discharge his functions as defined in the Act.

19. The applications for grant of permission for repair or renovation of buildings or structures which existed in a prohibited area before the 16<sup>th</sup> June of 1992, or which had been subsequently constructed with the approval of the Director General may be made to the Competent Authority by the owner or the possessor in such manner as may be prescribed (as per the rules to be notified). **[Section 20D (1)]**

20. The applications for grant of permission for construction or re-construction or repair or renovation of any building or structure or land in a regulated area may be made to the Competent Authority by the owner or the possessor in such manner as may be prescribed (as per the rules to be notified) **[Section 20D (1)]**

21. The Competent Authority shall forward the applications so received within 15 days to the National Monument 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) in accordance with heritage bye-laws to be framed for the concerned protected monument or protected area. **[Section 20D (2)]**

22. The Central Government may prescribe the category of applications in respect of which the permission may be granted under sub-section 20D (2) and the applications which shall be referred to the National Monument Authority for recommendations. **[Section 20D (2)]**

23. The National Monument Authority shall intimate within two months after the receipt of the application to the Competent Authority impact of such construction (including the large scale development project, public project and project essential to the public. **[Section 20D (3)]**

24. The Competent Authority shall either grant permission or convey refusal to the applicant within one month of receipt of the recommendation of the National Monument Authority. **[Section 20D (4)]**

25. The recommendation of the National Monument Authority shall be final. **[Section 20D (5)]**

26. In case of refusal of the permission, the Competent Authority shall by order in writing and 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 National Monument Authority. **[Section 20D (6)]**
27. The Competent Authority is empowered to refer the permission so granted for carrying out of repair or renovation work or re-construction of building or construction to the National Monument Authority, in case, it is found that such repair or renovation or re-construction or construction is likely to cause an adverse impact on the preservation, safety, security or access to the monument considerably for recommendation, and if so, recommended by the Authority, the Competent Authority may withdraw the permission granted. **[Section 20D (7)]**
28. The proviso to section 20D(7) authorizes the Competent Authority, in exceptional circumstances and with the approval of the National Monument Authority, to consider grant of permission for repair/renovation/construction/reconstruction, etc. even before the heritage bye-laws are approved/notified. **[Section 20D (7)]**
29. The Central Government or the Director General shall have to exhibit on website all the permissions granted or refused. **[Section 20D (8)]**
30. The Competent Authority in consultation with the Indian National Trust For Art and Cultural Heritage 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. **[Section 20E (1)]**
31. The heritage bye-laws shall specify heritage controls such as elevation, façade, drainage system, road and service infrastructure (including electric poles, water and sewer pipelines) in addition to such matters as may be prescribed (to be detailed out in the rules to be framed). **[Section 20E (2)]**
32. The Central Government shall specify, by rules (to be framed), the manner of preparation of detailed site plans in respect of each protected monument or protected area, 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. **[Section 20E (3)]**
33. The preparation of heritage bye-laws in respect of each protected monument or protected area shall be governed by the ground conditions and nature of the monument for which it has been found essential to undertake detailed documentation of the protected area, prohibited area and regulated area in each case.
34. The Competent Authority has been authorized to appoint experts or consultants for preparation of detailed site plans and heritage bye-laws. **[Section 20E (4)]**  
The preparation of detailed site plans and heritage bye-laws in respect of each protected monument and protected area is a major exercise and time consuming. With a view to expedite the process, the Competent Authority has been vested with the powers to take outside help and assistance from the experts and consultants.
35. The heritage bye-laws which shall eventually be prepared by the Competent Authority with the help of outside experts and consultants shall be got approved by the National Monument Authority, which is proposed to have the Chairperson and members of excellence in the relevant areas like archaeology, country and town planning, architecture, conservation architecture or law. **[Section 20E (5)]**

36. The heritage bye-laws in respect of each protected monument or protected area shall be laid on the table of each House of the Parliament. **[Section 20E (6)]**

The heritage bye-laws therefore shall have to be published in the Official Gazette to make them available to public.

37. The heritage bye-laws shall be exhibited by the Competent Authority on the website after tabling the same in each House of the Parliament. **[Section 20E (7)]**

This provision has been made to make the system transparent and to avoid any undue inconvenience or harassment to the public.

38. Penalty under section 30 of the Principal Act has been enhanced from three months to two years and fine of rupees five thousand to one lakh or with both in respect of violation of sub-section (1).

(1) WHOEVER—

(i) destroys, removes, inquires, alters, defaces, imperils, or misuse 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, bas-relief, 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 two years, or with fine which may extend to one lakh rupees, or with both.

Similar to sub-section (1) the penalty for violation of sub-section (2) of section 30 has also been enhanced.

(2) Any person who moves any antiquity in contravention of a notification issued under sub-section (1) of section 25 shall be punishable with imprisonment which may extend to two years or with fine which may extend to one lakh rupees or with both; and the court conviction a person of any such contravention may by order direct such person to restore the antiquity to the place from which it was moved.

39. In respect of unauthorized constructions in the prohibited and regulated areas of the protected monument and protected area, the penalty has been incorporated now by the Amendment Act. The penalty provision is as under –

(i) Whoever raises, on and after the date on which the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010, 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. **[Section 30A]**

(ii) Whoever raises, on and after the date on which the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010, 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. **[Section 30B]**

(iii) 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 re-construction 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. **[Section 30C]**

40. The penalty has been enhanced to ensure that it acts as a deterrent and none dares to indulge in unauthorized and illegal activities as per the Act. Provision for severe punishment has also been made for the officers of the Central Government who are found indulged in any act which is illegal or unauthorized as per the Act. This will make sure that the Central Government officers discharge their functions with utmost sincerity and as per the Act.

41. The Director General of the Archaeological Survey of India has been made responsible to conduct a survey or cause survey to be conducted in respect of all prohibited areas and regulated areas of the protected monuments and protected areas for the purpose of preparing detailed site plans within a period which may be specified by the Central Government. A report on the survey to be conducted shall be submitted by the Director General to the Central Government and the Authority. **[Section 35A (1) and (2)]**

This exercise is essential to document the existing ground conditions in the prohibited areas and regulated areas so that it is easy to find out if some one has undertaken construction activities without obtaining permission from the Competent Authority. The preparation of detailed site plans in respect of each protected monument or protected area is also essential for preparation of heritage bye-laws. The Director General has to complete exercise within a time to be specified by the Central Government.

42. Responsibility has been entrusted upon to the Director General of the Archaeological Survey of India to identify or cause to be identified, all constructions (of whatever nature) made on and after the 16<sup>th</sup> 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 within a time frame, which may be specified by the Central Government. **[Section 35B(1)]**

Although, the Circles of the ASI may have some data on unauthorized constructions carried out in the prohibited and regulated areas of protected monuments and sites, this may not be correct and many omissions could be there because of lack of proper mechanism and manpower infrastructure. This is a major exercise which may involve a lot of interaction with Panchayats, Municipalities, Development authorities, revenue authorities and various Central and State Government departments to find out the details of construction carried out in the prohibited and regulated areas of the protected monuments and protected areas without the approval of the Director General.

43. The Director General, Archaeological Survey of India has been given powers to call for information from the local bodies and other authorities for identification of all constructions made on and after the 16<sup>th</sup> June, 1992 in all prohibited areas and regulated areas. **[Section 35B(2)]** This provision makes it mandatory for the local bodies and other authorities to share the details on unauthorized constructions carried out by the individuals and public bodies in the prohibited and regulated areas of the monuments and sites after the issue of the notification dated 16<sup>th</sup> June, 1992 in the Official Gazette.

44. Section 12 of the Amendment Act validates the actions taken under notification no.S.O.1764, dated the 16<sup>th</sup> day of June, 1992.

45. As per the section 12 of the Amendment Act, the permissions granted by the Archaeological Survey of India between 16<sup>th</sup> June, 1992 and the enforcement of the Ancient Monuments and Archaeological Sites and Remains (Amendment and

Validation) Act, 2010 for construction or re-construction or repair or renovation except those granted ex-post-facto after the completion of the structure or building in the prohibited areas and regulated areas of the protected monuments and protected areas have been held as valid and not challengeable in any court, tribunal or other authority. Any rule, order or notification made under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 for carrying out any repair, renovation or construction work or for undertaking any public work or public project before the commencement of the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010 shall also not be challengeable in any court, tribunal or other authority.