

## Chapter 3: Policy and Regulations

Availability of appropriate Acts, Rules, Laws, and Guidelines and their contemporary relevance is a pre-requisite for preservation and conservation of monuments and antiquities. In this chapter, issues connected with policy and regulations have been discussed.

### 3.1 Formulation and updation of Acts, Rules and Laws

Observations on various Acts, Rules and other Laws available for preservation and conservation of monuments and antiquities discussed in the previous Report were reviewed by the PAC. PAC had made several recommendations prescribing timely formulation of new Act/Rules or updation of existing one. It was noted that the Ministry/ASI had not taken desired level of action on most of these policy related recommendation as discussed below:

#### A. National Conservation Policy

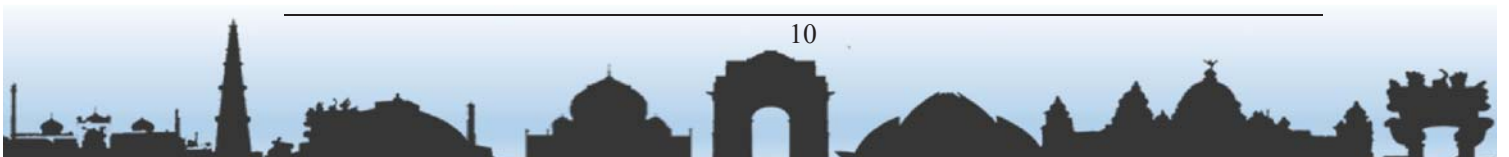
The National Policy for conservation of ancient monuments, archaeological sites and remains was notified in February 2014. *The PAC had recommended the Ministry to also notify the rules under the Policy to streamline notification and de-notification of monuments and their conservation activities.* In this respect, the Ministry had intimated (April 2016) the PAC that guidelines on notification and de-notification of monuments had been drafted and uploaded on the website for public comments. However, during follow-up audit, no such document/rule was found prepared or notified by ASI.

Ministry/ASI in response intimated (January/February 2022) that guidelines on notification and de-notification of monuments were not to be issued under the Conservation Policy. It was part of Rules under AMASR Act 1958 for which a Committee was being finalised.

Audit noted that the reply was contrary to the earlier response of the Ministry. The recommended rules as envisaged by the PAC were not yet finalised and notified as of January 2022.

#### B. National Policy on Archaeological Excavation and Explorations

The National Policy on Archaeological Excavation and Exploration was approved by the Ministry of Culture in March 2015. *The PAC had asked the Ministry to expedite the final notification of the Policy for Excavations and Explorations so that the public resources earmarked for these activities were properly streamlined and focused.* During follow-up audit it was noted that notification of the Excavation and Exploration Policy was not done.



Ministry/ASI in response stated (January 2022) that while notifying the said policy, certain observations pertaining to the policy being benchmarked to the international best practices and use of technology were brought to the notice of ASI by critical stakeholders including NITI Aayog. Therefore, the said policy was under review to make it more comprehensive which will be notified before the end of the financial year.

Audit noted that NITI Aayog had asked the ASI (May 2020) to revisit and update the document keeping in view changing scenarios, advancement of technology, etc. as the same was originally drafted in 2009. In this respect, ASI had intimated (December 2020 and December 2021) that this exercise was under process. As such, there have been considerable delay in updation and finalisation/notification of National Policy on Archaeological Exploration and Excavation.

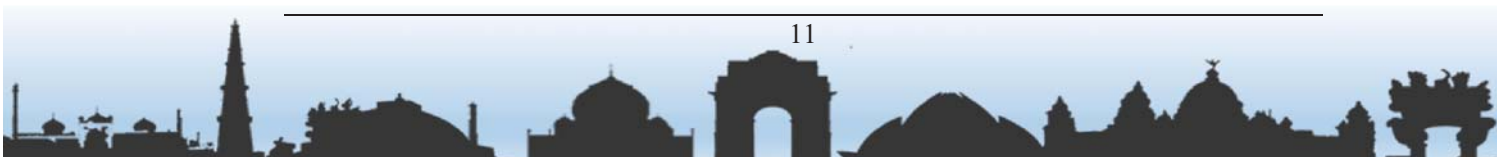
### **C. Antiquities and Art Treasures (AAT) Act**

*The PAC was concerned that the process for amending the AAT Act, which started in 1997, was pending even after a lapse of two decades. It desired that the Ministry expedite the amendment in the respective Act.* In this regard, the Ministry had informed the PAC that in order to make the Act simple, implementable and effective, a committee to suggest suitable amendment or framing of a new draft was constituted. Subsequently, ASI intimated (August 2017) through ATN that in place of AAT Act, 1972, draft of two new Acts *i.e.* The Antiquities and Art Treasure (Export and Import Control) Act, and Antiquities and Art Treasure Act was prepared and submitted to the Ministry for consideration. However, after recommendation of the Ministry of Law, it was preparing a revised single Act clubbing the two Acts.

While responding to progress on the Act, ASI clarified (December 2020 and December 2021) that the exercise was a time taking process requiring meticulous discussions and deliberation. ASI while accepting the facts further stated (January 2022) that it was working in consultation with the Ministry on amendments to be carried out under the AAT Act, 1972. It also submitted that the work was likely to be completed in year 2022. The fact remains that despite instruction of PAC, exercise was still ongoing since 1997.

### **D. Ancient Monuments and Archaeological Sites and Remains (AMASR) Act**

*PAC had asked the Ministry to carry out necessary modifications in AMASR Act and put in place a system of recording footfalls in non-ticketed monuments and to resolve the issue of delay in categorisation of monuments.* It was noted that necessary amendment in AMASR Act had not been made and the issue of categorisation of monuments was pending (*refer Para 6.2.1*). Further, there was still no system of recording footfalls in non-ticketed monuments (*refer Para 5.3.1*).



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Ministry/ASI in its reply (January 2022) submitted that the Bill to amend the AMASR Act, 1958 was placed before the Parliament in January 2018. The Lok Sabha passed the Bill on 02 January 2018 but Rajya Sabha referred the said Bill to Select Committee. After various deliberations, the Bill was recommended by the Select Committee. However, the said Bill was lapsed due to dissolution of the Parliament. It informed that at present, final details of the amendments were being worked out.

**E. Uniform procedures for Archaeological Museums and Management of Antiquities**

*The PAC had noted that comprehensive policy guidelines addressing all issues related with management of antiquities viz. acquisition, accession, custody, rotation, etc. at museums under the control of the Ministry and also for site-museums under ASI was not available. Ministry had informed the PAC about following steps being undertaken by it:*

- *drafting and finalisation of uniform policy for acquisition of art objects;*
- *constitution of committee to work out uniform security policy; and*
- *constitution of committee to prepare standard manual of procedures.*

*PAC was of the view that artefacts of culture and cultural excavations are the pristine cultural glory of any nation and therefore it recommended that the Ministry should expedite the implementation of a uniform procedures for all museums.*

Audit noted that no uniform procedure for museums under the control of the Ministry/ASI covering all issues as recommended by PAC was available. ASI initially stated (March 2021) that preparation, modification and following of such document would be based on the direction of the Ministry. Audit however noted that no such document/direction was available from the Ministry. ASI further stated (January 2022) that its site-museums were different from other national level museums and as such their acquisition policy may not be fit for the museums under ASI. The reply only indicates the need for a comprehensive policy for ASI's site museums.

**E.1 Guidelines for Site-museums under ASI**

ASI, in response to *PAC remark regarding absence of guidelines for site-museums*, intimated (November 2020) that guideline for ASI museums prepared in 2013 was being followed by it. ASI further intimated (March 2021) that issues like accession register, rotation, etc. have been covered in the 14 points museum reforms by the Ministry (issued in 2009).

Audit, however, noted that ASI guideline was not a comprehensive document for addressing all issues related with management of antiquities. The replies were also



not tenable as both the documents *i.e.* guidelines for ASI museums and 14 points museum reforms were available at the time of PAC meetings. The PAC, while making its recommendation (in 2016), would have taken into consideration these documents. As such, the reply ignore the PAC contention regarding requirement of a single comprehensive document for management of antiquities, which was initially accepted by the Ministry for compliance.

In January 2022, Ministry/ASI while reiterating its earlier reply stated that the guidelines prepared in 2013 and 14 points museum reform suffice requirements of its site-museums. However, keeping in view the observations of PAC a comprehensive policy is being finalised.

### **3.2 Preparation of Heritage Bye-Laws (HBL) and Site-Plans**

The National Monuments Authority (NMA) was constituted as a statutory body (2011) under the provisions of AMASR (Amendment and Validation) Act, 2010 to regulate the construction activities around the Centrally Protected Monuments (CPM). Its basic objective was implementation of the statutory provisions of prohibited and regulated areas of CPM through Heritage Bye-Laws (HBL). NMA was to exercise and discharge its power (*i.e.* providing no-objection certificates for undertaking construction activities in the prohibited/regulated areas of CPM) through Competent Authorities notified by the Central Government<sup>6</sup>. During the follow-up audit, it was noted that progress of NMA in respect of some mandated activities was slow. These issues are discussed in succeeding paragraphs:

**3.2.1 Preparation of Site-Plans:** The Heritage Bye-Law was to be framed on the basis of Site-Plan for prohibited and regulated areas of each protected monument. According to AMASR Rules 2011, within a period of five years, the Director General, ASI was to make endeavour for the purpose of preparing detailed Site-Plans. However, in another notification issued in 2018, this period was extended to ten years (till 2021). Consequently, preparation of Site-Plans and the finalisation of HBL had also been delayed. NMA intimated that survey plans for 600 monuments had been prepared. In this regard ASI intimated (February 2022) that the job was being outsourced, however complex ground conditions, spread of monuments and size of monuments, etc. delay the process. Fact remains that preparation of HBL for all monuments had been delayed.

**3.2.2 Preparation of HBL:** Under the provision of AMASR (Amendment and Validation) Act, 2010, NMA was to notify monuments-specific HBL. In this respect, five Regional Directors of ASI were identified (February 2014) for preparation of draft HBL for approval of NMA. However, only five HBL covering 31 protected

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<sup>6</sup> 32 Competent Authorities were notified by the Government in February 2014.



monuments have been notified so far (January 2022) while 165 HBL involving 210 monuments were reported to be at various stages of finalisation<sup>7</sup>.

**3.2.3 Priority in preparation of HBL:** On the basis of number of applications received for construction related activities, NMA had identified 230 out of 3693 CPM as being most priority for preparation of HBL. However, as intimated by NMA (December 2020), out of total monuments notified/under process, so far only seven pertain to the list of most priority monuments.

**3.2.4 Preparation of Guidelines for Large Projects:** NMA was to issue detailed guidelines for archaeological impact assessment of large scale development projects. Further, the Authority was to make recommendations for restoration of the cultural landscape, which had been damaged due to construction or like activities in the past. With reference to preparation of guidelines for large projects, NMA intimated (November 2020) that for applications having total built up area of 2000 sqm and above, additional information were being obtained in prescribed format while for cases having built up area of 5000 sqm or above, archaeological impact assessment reports were being obtained. It also submitted that while formulating HBL, cultural landscape aspect of monuments were kept in mind and as such related landscape restoration exercise for the CPM was not being conducted. Audit is of the view that in the absence of guidelines and preparation/notification of few HBL, the exercise of processing of applications for construction related activities was on ad-hoc basis.

NMA intimated (January 2022) that onus of preparation of HBL primarily lies with ASI which was to be prepared on the basis of surveys and site-plans by its officials *i.e.* Circles and Regional Directors in ASI. The role of NMA was to place them before the Authority for approval and laying before the Parliament. The fact remains that there have been considerable delays in the preparation of HBL and Site-Plans. As a result, permission for construction related activities in prohibited/regulated areas of CPM were being provided by treating the application as requests for permission under exceptional grounds<sup>8</sup> provided in NMA Rules.

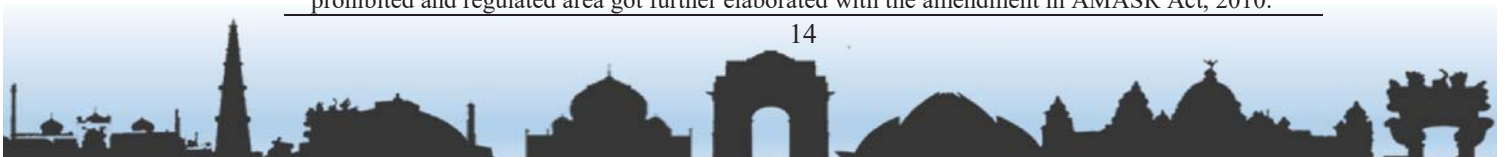
#### **Construction activities in prohibited Area of Humayun's Tomb Complex**

The AMASR Act was amended in 2010 by introducing the constitution of NMA and defining its role in giving permission for renovation and construction related activities in prohibited/regulated area of the monuments<sup>9</sup>. As per Para 20C of the amended Act, any person, who owns any building or structure, which existed in

<sup>7</sup> Two HBL covering 2 CPM sent to Ministry for laying in Parliament (in September 2020), 103 HBL covering 128 monuments under consultation and 60 HBL covering 80 CPM uploaded on website for inviting suggestions.

<sup>8</sup> Under Rule 15 of NMA Rules, 2011, in exceptional cases, pending the finalisation of the Heritage Bye-Laws, permission for construction related activities can be granted.

<sup>9</sup> In terms of power conferred under Rule 31 of the AMASR Rules, 1959, and notification issued in June 1992, ASI had declared areas upto 100 meters from the protected limits of the monument and further beyond 200 meters to be prohibited and regulated areas respectively. The concept of prohibited and regulated area got further elaborated with the amendment in AMASR Act, 2010.





prohibited area of the monument may make an application for carrying out such repair or renovation, as the case may be. Further, according to Para 20A, no person, other than an archaeological officer, shall carry out any construction in any prohibited area, keeping in view the facts that-

- (a) it is necessary or expedient for carrying out such public work or 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 or, or access to, the monument or its immediate surrounding.

During physical inspection (January 2021), it was noticed that a project for creation of modern structures e.g. construction of shops, landscaping, underpass, conservation etc. was being undertaken in prohibited area of Humayun's Tomb, Delhi by agency other than ASI.



ASI in a reply (August 2021) informed that it was associated with the project through a multi-agency MoU<sup>10</sup> signed in July 2007 (later extended in December 2017). According to the MoU, apart from conservation activities (including creation of site-museum and interpretation centre), the Trust<sup>11</sup> (executing agency) was to carry out various urban development activities (including creation of shops and restaurants) in consultation with CPWD.

Audit pointed out (June 2021) that the interventions were not creation of facilities (viz. toilet, water, parking etc.) for visitors of the monument and by allowing commercial construction (e.g. shops) to another agency in prohibited areas of the

<sup>10</sup> In 2007, MoU was signed between ASI, CPWD, MCD (as Public Parties) and Aga Khan Trust for Culture (AKTC), Aga Khan Foundation India (AKFI) (as Private Parties). The initiative had three components viz. (1) Heritage Conservation (2) Socio Economic Initiative, and (3) Environmental Development. In 2017, while extending the period of MoU, a Trust Deed was signed by CPWD, ASI, SDMC, AKFI and AKTC.

<sup>11</sup> According to MoU, a Trust viz. Government Sunder Nursery Management Trust was created.



monument, ASI had not adhered to provisions of the AMASR Act. Further, according to MoU, only the ownership of interpretation centre to be built by the agency was to vest with ASI.

ASI in response stated (August 2021) that AMASR Act (Section 20A(3)) authorised it to construct amenities in the prohibited/regulated area of a CPM and creation of interpretation centre, souvenir shops, underpass, etc. being constructed by the ASI through Aga Khan Trust (Private Party) were essential amenities for tourists visiting the World Heritage Site. It also informed that necessary approval from NMA regarding construction of interpretation centre was obtained by it in November 2014. ASI while reiterating to its earlier reply to the follow-up report stated (January 2022) that the MoU was signed after due approval of the Government.

Reply of ASI was not tenable, as NMA had communicated<sup>12</sup> to audit that they have not received any application for development of museum and shopping complex within the prohibited area of Humayun's Tomb Complex. During extension of MoU in December 2017 also, this issue was not brought to the notice of NMA.

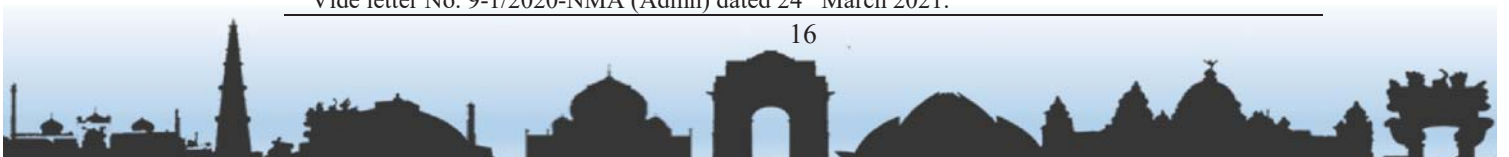
By entering into MoU and without the approval of NMA, allowing the Trust to carry out construction works, ASI had not followed the provisions of AMASR Act.

### **Conclusions:**

- *The recommendations made by PAC were essential for effective heritage management. However, in most cases, the exercise to carry out necessary amendment/notification on policy related areas of concern discussed by the PAC were still in process.*
- *There was delay in preparation of Heritage Bye-Laws to regulate construction related activities in prohibited/regulated areas of the monument despite constitution of National Monument Authority (NMA) in 2011.*

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<sup>12</sup> Vide letter No. 9-1/2020-NMA (Admn) dated 24<sup>th</sup> March 2021.



# **Human Resources Management**





**Ajanta Caves (Maharashtra)**