

Bill No. VII of 2009

THE NATIONAL COMMISSION FOR HERITAGE SITES BILL, 2009

A

BILL

to constitute a National Commission for Heritage Sites and provide for matters connected therewith or incidental thereto.

WHEREAS decisions were taken at the United Nations Educational, Scientific and Cultural Organisation Convention held in Paris in November, 1972, which India ratified in 1977, to ensure effective and active measures for protection, conservation and presentation of the cultural and natural heritage situated on the territory of each State Party;

AND WHEREAS it is considered necessary to implement the decisions to take appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of cultural and natural heritages.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title and commencement.	1. (1) This Act may be called the National Commission for Heritage Sites Act, 2009. (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.	5
Definitions.	2. In this Act, unless the context otherwise requires,— (a) “Chairperson” means the Chairperson of the Commission; (b) “Commission” means the National Commission for Heritage Sites constituted under section 4; (c) “heritage site” means a cultural heritage site, a natural heritage site, a mixed cultural and natural heritage site or a cultural landscape of outstanding value; <i>Explanation.</i> —For the purposes of this clause,— (i) “cultural heritage site” shall include,— (A) monuments, that is to say, architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features which are of outstanding value from the point of view of history, art or science; (B) buildings, that is to say, separate or connected buildings which, because of their architecture, homogeneity or place in the landscape, are of outstanding value from the historical, aesthetic, ethnological or anthropological point of view; and (C) sites, that is to say, works of man including industrial or railway heritage or the combined works of nature and man and areas including archaeological sites which are of outstanding value from the historical, aesthetic, ethnological or anthropological point of view; (ii) “natural heritage site” shall include,— (A) natural sites or precisely delineated natural areas which are of outstanding value from the point of view of science, conservation or natural beauty; (B) geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants and are of outstanding value from the point of view of science or conservation; (C) natural features consisting of physical and biological formations or groups of such formations, which are of outstanding value from the aesthetic or scientific point of view; (iii) “mixed cultural and natural heritage site” shall include properties which satisfy a part of the attributes of both cultural heritage site and natural heritage site; (iv) “cultural landscape” includes cultural properties representing the combined works of man and the nature and illustrative of the evolution of human society and settlement over a time, under the influence of the physical constraints and opportunities presented by their natural environment and of successive social, economic and cultural forces, both external and internal; (v) “outstanding value”, in relation to a heritage site, means its cultural or natural significance which is so exceptional as to transcend the boundaries of the place in which it is located and is of great importance for the present and future generations of the country;	10 15 20 25 30 35 40 45

(d) “heritage sites roster” means the roster of heritage sites notified under section 3;

(e) “member” means a member of the Commission and includes the Member-Secretary;

5 (f) “notification” means a notification published in the Official Gazette and the word “notify” shall be construed accordingly;

(g) “prescribed” means prescribed by rules made under this Act.

CHAPTER II

THE NATIONAL COMMISSION FOR HERITAGE SITES

- 10 **3.** 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. Power of Central Government to notify heritage sites.
- 4. (1) With effect from such date as the Central Government may, by notification, appoint in this behalf, there shall be constituted for the purposes of this Act, a Commission to be called the National Commission for Heritage Sites.** Constitution of Commission.
- 15 (2) The Commission shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with the power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall by the said name sue and be sued.
- 5.** The Commission shall consist of,— Composition of Commission.
- 20 (a) a Chairperson to be appointed by the Central Government from amongst persons of ability, integrity and standing who,—
- (i) have knowledge and experience of twenty-five years in archaeology and history, architecture, conservation, science and technology, environmental science, ecology, anthropology, sociology, town and country planning or public administration; and
- 25 (ii) are committed to heritage conservation;
- (b) seven members to be appointed by the Central Government from amongst persons who have knowledge and experience of twenty years in archaeology and history, architecture, conservation, science and technology, environmental science, ecology, anthropology, sociology, town and country planning or public administration:
- 30 Provided that the Central Government shall, while appointing the members, ensure that at least one member each is a person having knowledge and experience in archaeology, conservation or ecology respectively.
- (c) a Member-Secretary to be appointed by the Central Government from amongst persons who is or has been, in the service of the Central Government or a State Government, and has held the post of Secretary to the Government of India or an equivalent post in the Central Government or State Government and has experience in archaeology, conservation, environmental science, ecology or public administration.
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- 6. (1)** The Chairperson shall hold office for a term of five years from the date on which he enters upon his office: Terms and conditions of service of Chairperson and members.
- 40 Provided that no person shall hold office as a Chairperson after he has attained the age of sixty-five years.

(2) A member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment for another term:

Provided that no person shall hold office as a member after he has attained the age of sixty-five years.

(3) Before appointing any person as the Chairperson or a member, as the case may be, the Central Government shall satisfy itself that the person does not have any such financial or other interest as is likely to affect prejudicially his functions as such Chairperson or member, as the case may be. 5

(4) An officer of the Central Government or State Government on his selection as the Chairperson or a member, as the case may be, shall have to retire from service before joining as such Chairperson or member, as the case may be. 10

(5) The Chairperson or a member, as the case may be, may relinquish his office by giving in writing to the Central Government notice of not less than three months.

(6) The Central Government may remove from office the Chairperson or a member, as the case may be, who— 15

(a) is, or at any time has been, adjudged as an insolvent; or

(b) has become physically or mentally incapable of acting as such Chairperson or a member, as the case may be; or

(c) has been convicted of any offence which, in the opinion of the Central Government, involves moral turpitude; or 20

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chairperson or a member, as the case may be; or

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

(7) No such Chairperson or member, as the case may be, shall be removed under clause (d) or clause (e) of sub-section (6) unless he has been given a reasonable opportunity of being heard in the matter. 25

Filling up of Vacancies.

7. If, for reasons other than temporary absence, any vacancy occurs in the office of the Chairperson or a member, as the case may be, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the person so appointed shall hold office for the remainder of the office of the person in whose place such person is so appointed. 30

Salary, allowances and other terms and conditions of service of Chairperson and members.

8. The salary and allowances payable to and other terms and conditions of service of the Chairperson or a member, as the case may be, shall be such as may be prescribed.

Vacancies, etc., not to invalidate proceedings of Commission.

9. No act or proceeding of the Commission shall be questioned on the ground merely of the existence of any vacancy or defect in the constitution of the Commission or any defect in the appointment of a person acting as the Chairperson or a member, as the case may be. 35

Constitution of Committees.

10. 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.

11. (1) The Commission may associate with itself, in such manner and for such purposes as may be prescribed, any person whose assistance or advice it may desire in carrying out any of the provisions of this Act. Temporary association of persons with Commission for particular purpose.
- (2) A person associated with it by the Commission under sub-section (1) for any purpose shall have a right to take part in discussions relevant to that purpose, but shall not have a right to vote at a meeting of the Commission, and shall not be a member for any other purpose.
- (3) **The person so associated shall be entitled to such allowance for attending the meeting as may be prescribed.**
12. The Chairperson shall have powers of general superintendence and directions in the conduct of the affairs of the Commission and he shall, in addition to presiding over the meetings of the Commission, exercise and discharge such powers and functions of the Commission as may be prescribed. Powers of Chairperson.
13. (1) Subject to the control of the Chairperson, the Member-Secretary shall exercise and perform such powers and duties as may be prescribed or as may be specified by the Chairperson. Powers of Member-Secretary.
- (2) All orders and decisions of the Commission shall be authenticated by the Member-Secretary.
14. (1) The Commission shall meet as and when necessary at such time as the Chairperson may think fit. Procedure to be regulated by Commission.
- (2) The Commission shall regulate its own procedure.
15. (1) The Central Government shall provide the Commission with such officers and employees as may be necessary for the efficient performance of the functions of the Commission under this Act. Officers and employees of Commission.
- (2) **The salaries and allowances payable to, and the other terms and conditions of service of, the officers and employees appointed for the purpose of the Commission shall be such as may be prescribed.**

CHAPTER III

FUNCTIONS OF THE COMMISSION

16. The Commission shall perform the following functions, namely:— Functions of Commission.
- (a) recommend to the Central Government or State Government on short and long term policies in respect of conservation, protection and management of heritage sites;
- (b) lay down standards for development of scientific and technical institutions and courses offered by them for preservation and presentation of heritage sites;
- (c) formulate guidelines for conservation and management of heritage sites;
- (d) conduct studies and research for identification and categorisation of heritage sites;
- (e) 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;
- (f) publish periodically heritage maps prepared on the basis of the results of studies and research;

(g) make a list of heritage sites for nomination to the World Heritage Sites list of United Nations Educational, Scientific and Cultural Organisation;

(h) make recommendations to the Central Government or State Government on any matter relating to heritage as may be referred to it by that Government;

(i) make periodical reports to the Central Government on any matter relating to heritage sites; and 5

(j) maintain the heritage sites roster containing the description of the heritage sites notified under section 3 in such manner as may be prescribed.

Power of
Commission
to issue
directions.

17. (1) The Commission may issue directions to any person who is the owner of, or has, in his 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. 10

(2) Any person who fails to comply with the directions issued by the Commission under sub-section (1) shall be punishable with fine which may extend to ten lakh rupees: 15

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding ten lakh rupees.

(3) The Commission shall authorise a person not below the rank of the Under Secretary to the Government of India to file a complaint in the court for contravention of the provisions of this section. 20

(4) No court shall take cognizance of a complaint made under this section unless it is made in writing by the person so authorised under sub-section (3).

CHAPTER IV

FINANCE, ACCOUNTS AND AUDIT

Grants by
Central
Government.

18. (1) The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Commission grants of such sums of money as the Central Government may think fit for being utilised for the purposes of this Act. 25

(2) The salaries, allowances and other remuneration of the Chairperson, members and other officers and employees shall be met out of the grants.

Annual report.

19. The Commission shall prepare once every year, in such form and within such time as may be prescribed, an annual report giving a true and full account of its activities during the previous year, and copies thereof shall be forwarded to the Central Government, and the Central Government shall cause every such report to be laid before each House of Parliament. 30

Accounts and
audit.

20. (1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India. 35

(2) The accounts of the Commission be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General. 40

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Commission shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books of account, 45

connected vouchers and other documents and papers and to inspect the office of the Commission.

- (4) The accounts of the Commission as certified by the Comptroller and Auditor-General of India or any person appointed in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

CHAPTER V

MISCELLANEOUS

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

Power of Central Government to issue directions.

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

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

22. The Chairperson, members, officers and other employees of the Commission shall, when acting or purporting to act in pursuance of any of the provisions of this Act, be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Chairperson, members, officers and other employees of Commission to be public servants.

23. No suit or legal proceeding shall lie against the Chairperson, members or officers of the Commission in respect of anything which is in good faith done or intended to be done in pursuance of the Act.

Protection of action taken in good faith.

24. (1) The Central Government may, by notification, make rules for carrying out the purposes of this Act.

Power to make rules.

- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and members under section 8;
- (b) the constitution of Committees under section 10;
- (c) the manner and the purposes for which the Commission may associate any person for assistance or advice under sub-section (1) of section 11;
- (d) the allowances payable to the associated persons for attending the meeting under sub-section (3) of section 11;
- (e) the powers and functions of the Chairperson under section 12;
- (f) the powers and duties of the Member-Secretary under section 13;
- (g) the salaries and allowances payable to, and the other terms and conditions of service of, the officers and employees under sub-section (2) of section 15;
- (h) the manner of maintaining heritage site roster under clause (j) of section 16;
- (i) the form and the time for preparation of annual report under section 19; and
- (j) the form of annual statement of accounts under section 20.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule. 5

STATEMENT OF OBJECTS AND REASONS

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 16th November, 1972. India has ratified this convention on 14th 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.

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.

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 numbers of which run into lakhs. Moreover, the present legislation does 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 which is much wider as it encompasses various facets of heritages including cultural (ancient as well as modern) and natural heritages. These aspects are not provided in our legislations relating to archaeology, forest and environment.

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.

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 fulfil our obligations under the UNESCO's World Heritage Convention of 1972.

Accordingly, it is proposed 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

(iv) power of the Central Government to issue directions.

The Bill seeks to achieve the above objects.

NEW DELHI;
The 21st February, 2009.

AMBIKA SONI.

FINANCIAL MEMORANDUM

Sub-clause (1) of clause 4 of the Bill provides for setting up of a National Commission for Heritage Sites.

Clause 8 provides for the salary, allowances and other terms and conditions of service of Chairperson and members of the Commission.

Sub-clause (3) of clause 11 provides for payment of allowances to persons who are temporarily associated with the Commission for a particular purpose.

Sub-clause (2) of clause 15 provides for salaries, allowances and other terms and conditions of service of officers and employees of the Commission.

The expenditure on account of salary and allowances of the Chairperson, members, Member-Secretary and other expenses in connection with the working of the Commission are required to be borne from the Consolidated Fund of India.

Recurring expenditure on the constitution of the Commission and other expenses, which may have to be borne as grant-in-aid to be paid by the Ministry of Culture, is expected to be approximately rupees sixteen crore and two lakhs per annum.

The Bill does not involve any other expenditure of a recurring or non-recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill empowers the Central Government to notify the heritage sites, keeping in view its national importance and to enter the description of such sites in the Heritage Sites Roster.

Clause 8 of the Bill empowers the Central Government to make rules to provide for the salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and members.

Clause 10 of the Bill empowers the Central Government to make rules to provide for the constitution of Committees and the number of persons who shall constitute the committee.

Sub-clause (1) of clause 11 of the Bill empowers the Central Government to make rules to provide for the manner and the purposes for which the Commission may associate any person for assistance or advice. Sub-clause (3) thereof empowers the Central Government to provide for the allowances payable to such associated persons.

Clause 12 of the Bill empowers the Central Government to make rules to provide for the powers and functions of the Chairperson.

Clause 13 of the Bill empowers the Central Government to make rules to provide for the powers and duties of the Member-Secretary.

Sub-clause (2) of clause 15 of the Bill empowers the Central Government to make rules to provide for the salaries and allowances payable to, and the other terms and conditions of service of, the officers and employees.

Sub-clause (j) of Clause 16 of the Bill empowers the Central Government to make rules to provide for the manner of maintaining Heritage Site Roster.

Clause 19 of the Bill empowers the Central Government to make rules to provide for the form and the time for preparation of annual report.

Clause 20 of the Bill empowers the Central Government to make rules to provide for the form of annual statement of accounts.

The matters in respect of which the said rules may be made or notification issued are matters of procedure and administrative detail, and as such, it is not practicable to provide for them in the proposed Bill itself.

The delegation of legislative power is, therefore, of a normal character.

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to constitute a National Commission for Heritage Sites and provide for matters connected
therewith or incidental thereto.

(Smt. Ambika Soni, Minister of Tourism and Culture)