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# **AN ANALYSIS OF LEGISLATION AND POLICIES FOR SAFEGUARDING MONUMENTS: A CASE STUDY OF THE ARCHAEOLOGICAL SURVEY OF INDIA'S ROLE IN PROTECTING INDIA'S CULTURAL HERITAGE**

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## **ABSTRACT**

This article delves into the regulation and policies directing the preservation of monuments in India, with an unequivocal focus on the part of the Archaeological Survey of India (ASI) in shielding the country's cultural heritage. The first section of the article gives a general summary of the historical and cultural significance of India's monuments, highlighting how crucial they are to comprehending the nation's past and maintaining its identity. Numerous archaeological sites and monuments that showcase India's rich cultural and architectural legacy can be found all over the country's historical terrain. However, these precious resources are seriously threatened by the quickening pace of urbanisation, environmental deterioration and ignorance. Through an extensive finding of admissible laws, along with Ancient Monuments and Archaeological Sites and Remains Act, 1958, and the Antiquities and Art Treasures Act, 1972, this research determines the cogency of these legal frameworks in preserving India's archaeological heritage. The article features the history of ASI and also an overview of the Archaeological survey of India's operation in different committees. This article contains a thorough examination of ASI's participation in implementing these regulations, emphasising its roles, organisational setup and obstacles in monument preservation

**Keywords:** Archaeological Survey of India, safeguarding monuments, legislations, conservation, historical monuments, public awareness.

## INTRODUCTION

India is a country where in a colossal and disparate multitude of monuments and archaeological sites can be witnessed, echoing its prosperous cultural and historical heritage. According to the people of India, such monuments and archaeological sites are evocative of the contemporary congregation of the pre-independence warfare's and also the memorable historical period. Heritage features a belonging to the culture of a particular society, such as traditions, languages, or buildings that were created in the past and still have historical importance.<sup>1</sup> The prevalent legacy for any country or its people is their momentous and treasured cultural and historical heritage. Even, everyone's cultural right and right to quality environment are recognized by the Human Rights Law.<sup>2</sup>

The conservation and sustentation of such monuments and sites is preeminent, not just for their peculiar cultural value they hold but also for their part in encouraging tourism from all over the world. It is very crucial to conserve our culture so that we can show our forthcoming generation as to where they belong. Once, India was known as 'the Golden Sparrow' because of its embellished history consisting of divergent religions, caste and a number of indigenous groups that have been living together in tandem from centuries.

The United Nations Educational, Scientific and cultural organisation (UNESCO) designates world heritage sites of outstanding universal value to cultural or natural heritage which have been nominated by countries which are signatories to the UNESCO world heritage convention, established in 1972.<sup>3</sup> India has a total of 42 world heritage sites, categorized by 34 are cultural sites, seven are natural sites and one is of mixed type. The Archaeological Survey of India (ASI), established in 1861, has always been at the leading edge to safeguard and preserve these heritage sites. As the chief consortium pledged for the supervision and handling of archaeological sites, the ASI plays a vital role in implementing the legal frameworks that administer the protection and preservation of monuments.

This article intent to bestow a thorough analysis of the legislation and policies appertaining to the protection of monuments in India, with an explicit focus on the ASI's role in protecting India's cultural and natural heritage sites. This article also seeks to assess convincingsness of

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<sup>1</sup> <https://dictionary.cambridge.org/dictionary/english/heritage>

<sup>2</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-politicalrights>

<sup>3</sup> <https://whc.unesco.org/en/convention/>  
<https://web.archive.org/web/20160827065310/https://whc.unesco.org/en/convention/>

different legal frameworks in preserving these sites such as the Ancient monument and archaeological sites and remains act, 1958 and the Antiquities and Art Treasures Act, 1972 and many other acts. The

Constitution of India has also mentioned articles for the protection of monuments under Article 49 of the Constitution, directive principles of state policy, wherein: protection of monuments and places and objects of national importance- 'It shall be the obligation of the State to protect every monument or place or object of artistic or historic interests, declared by or under law made by parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal, or export, as the case may be.'<sup>4</sup>

Eventually, Indian National Trust for Art and Cultural Heritage (INTACH) was introduced to keep a control and manage the activities of archaeological survey of India. INTACH was established in 1984 in New Delhi, with an aim to conserve heritage and spread awareness among the public. It encompasses of members from both nation and overseas and is the largest membership organisation in the country committed to conservation.<sup>5</sup>

Besides all of these acts, there are many hardships to conserve the monuments because of abounding reasons. The strain of urbanisation can be blamed for India's loss of valuable cultural treasures. The need to conserve such sites is given less importance than other topics of urbanisation and poverty. Preservation of cultural heritage is not merely an ethical obligation but also an economical investment that must be made to further the development of equitable and environmentally conscious cities. Cultural heritage is an essential commodity for ensuring equitable human development, creation of jobs and economic expansion.

## **LEGISLATION AND POLICIES FOR MONUMENT PROTECTION**

India is amongst the richest country in the world in terms of its historical and cultural heritage. Due to its diverse topography, it has a lot of natural heritage. In the recent scenario, where the country is under such transformation or urbanisation, there has been a persistent amount of attack on these sites resulting in damage. There has been a limited amount of endeavours done to protect such monuments. Many organisations are doing the best they can to preserve and conserve monuments but it is just a trivial amount. For conservation and preservation of

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<sup>4</sup> <https://www.constitutionofindia.net/articles/article-49-protection-of-monuments-and-places-and-objectsof-national-importance/> <sup>5</sup> <http://www.intach.org/>

monuments, there is a need for effective and well-made legislation as well as regulation. Even the Archaeological Survey of India was criticized by Supreme Court for failure to protect Taj Mahal from increasing pollution and even wondered whether the body should be relieved of the task to manage the affairs of the world heritage site.<sup>5</sup>

The first ever official endeavour made by the Indian government for conservation and excavation operation was known as the Bengal Regulation XIX of 1810. This was shortly succeeded by another one known as the Madras Regulation VII of 1817. Both of these acts gave power to the government of intruding in matters relating to wherever any public building was in menace of exploitation.

### **Constitution of India**

The protection of national heritage is an allegiance inflicted by the Constitution under Article 51 A, fundamental duties. Article 51 A (f) states that ‘It shall be the duty of every citizen of India to value and preserve the rich heritage of our composite culture.’<sup>6</sup> In the year 2017, an amendment bill was passed which stated that the words “to value and preserve” is to be replaced by “to value, preserve and propagate”.

In addition to it, article 49 of the Constitution provides for protection of monuments and places and objects of national importance stating that” it shall be the obligation of the State to protect every monument or place or object of artistic or historic interests, declared by or under law made by Parliament to be of national importance from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.<sup>7</sup>

It should be the duty of every citizen to protect its rich heritage as by doing so only, one would know the importance of such heritage and value it more. Rich heritage is not just beneficial for knowing one’s history but also for the economic stability of the country.

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<sup>5</sup> <https://timesofindia.indiatimes.com/india/archaeological-survey-of-india-failed-explore-tasking-taj-mahalupkeep-to-another-body-sc/articleshow/64102364.cms>

<sup>6</sup> P.M. Bakshi, The Constitution of India

<sup>7</sup> Ibid 7

**Indian Treasure Trove Act, 1878**

This act was enforced to preserve and safeguard any treasure which is found fortuitously but had the archaeological and historical importance. The only aim of this act was to ensure destruction of country's cultural wealth lawfully and to protect and preserve them. In this act the term 'treasure' does not relate to the definition of 'art-treasure' mentioned under the Antiquities and Art Treasures Act, 1972. Under section 4 of the act 'treasure' is defined as "anything of any value hidden in the soil, or in anything affixed thereto." But this treasure is of consequence only if it fulfils the criteria provided in the section of this act: 1) The amount or value of treasure exceeds ten rupees, and 2) that it is proved to have been hidden one hundred years before the date of finding.<sup>8</sup>

This act gives power to the collector to procure the found treasure on the payment of the value on part of the Government. However this act is not oriented towards the preservation of cultural heritage.

**The Ancient Monuments Preservation Act, 1904 (AMPA)**

This particular act was passed with an aim to safeguard artistic, archaeological and historically significant artefacts including the monuments. Monuments which are not of much national importance are covered under this act. However, a lot of states have passed laws that are similar to this act but in those jurisdictions, this act has either been found invalid or inapplicable.

**The Antiquities (Export Control) Act, 1947**

This act provided ordinance over the export of antiquities subservient to a license issued by the Director General. This gave sole power to the Director General to assess whether any article, object or thing falls under the category of antiquity or not.

The Antiquities (Export Control) Amendment Bill, 1965<sup>9</sup> was sought mainly to transfer this sole power of the Director General to the board which shall be known as the Antiquities Appellate Board and the decision made by this board was to be deemed as final. However this act was

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<sup>8</sup> The Indian Treasure-Trove Act, 1878

<sup>9</sup> The Antiquities (Export Control) Amendment, Bill, 1965, Section 3E(2)(1)

discovered to address the startlingly substantial amount of theft and illegal antiquity trafficking. This act is still in effect and has not been modified as of yet.

### **The Ancient Monuments Preservation Act, 1904 (AMPA)<sup>10</sup>**

This act was one of the earliest legislations in the country focused at protecting and preserving ancient monuments and archaeological sites. It served as a precursor to later laws in this field and demonstrated the rising recognition of the value of preserving cultural heritage during the colonial era. Nevertheless, AMPA has been repealed or not relevant in many states because these states have their own legislations in this field.

### **The Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951**

This act has been amended several times in order to strengthen its provisions and expand its scope. However, this act was repealed by the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (AMASRA).

### **The Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1958 (AMASRA)**

This act expanded the ambit of monument protection and introduced several new provisions to address the evolving challenges in conservation of heritage. This act was established on 28<sup>th</sup> august, 1958. The main purpose of the act was to shield cultural heritage sites from annihilation and deterioration. The act also gives the central government, the sole authority to designate historical sites and monuments under the category of protected monuments. Monuments like these are subject to strict laws to ensure their preservation after they are designated as protected. However, as mentioned in section 35 of the Act, in case the Central Government is of the view that any ancient and historical monument or archaeological site and remains had ceased to be of national importance, it may declare so.<sup>11</sup> Furthermore, this act establishes the National Monument Authority (NMA) that may assist the central government in matters relating to protection of such sites.

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<sup>10</sup> <https://ldashboard.legislative.gov.in/actsofparliamentfromtheyear/ancient-monuments-preservation-act1904>

<sup>11</sup> [https://www.indiaculture.gov.in/sites/default/files/acts\\_rules/TheAncientMonumentsandArchaeologicalSitesandRemainsAct1958\\_12.03.2018.pdf](https://www.indiaculture.gov.in/sites/default/files/acts_rules/TheAncientMonumentsandArchaeologicalSitesandRemainsAct1958_12.03.2018.pdf)

**The Antiquities and Art Treasures Act, 1972 (AATA)**

This act came into force on 9<sup>th</sup> September 1972 with an aim to regulate the export, import and ownership of antiquities and art treasures in order to avert their unlicensed smuggling and to ensure their preservation. It requires any institution or individual to procure a license for transaction of any such object, by the Government. Act also mandates any person to obtain certificate of registration of such antiquities and art treasures, which are in their possession. If a person is found of illegal trafficking of such objects, he/she shall be liable of fine or imprisonment.

**The Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010 (AMASRA)**

This act was introduced in March, 2010 with an aim to address lacunae and strengthen the legal framework of the previous act known as the Ancient Monuments and Archaeological Sites and Remains Act, 1958. The act modifies many definitions, like “archaeological sites”, “archaeological remains” and many more. The thought of buffer zones was also introduced by this act around such monuments, just to ensure supplementary protection. The act recommends the constitution of the National Monuments Authority (NMA) under Section 20F of the Act.<sup>12</sup>

**THE ARCHAEOLOGICAL SURVEY OF INDIA: A BRIEF HISTORY**

Three years after colonial administration was introduced in the subcontinent, the Archaeological Survey of India (ASI) was founded in 1861, and Alexander Cunningham was named its first Director General (1861-1885). The colonial state’s massive railway and road construction phase, during which railway contractors caused the most damage to archaeological sites, and founding of the ASI coincided with this activity. The ASI’s responsibilities in the Nineteenth century did not include conservation and repair, which were handled by local governments. Following several years without a Director General for the ASI, the department of Archaeology’s future was re-examined in 1895, and it was determined to focus solely on conservation. Under Lord Curzon, the Ancient Monuments Preservation (AMP) Act was passed in 1904.

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<sup>12</sup> [https://indiaculture.gov.in/sites/default/files/acts\\_rules/TheAncientMonumentsandArchaeologicalSitesandRemainsAct1958\\_12.03.2018.pdf](https://indiaculture.gov.in/sites/default/files/acts_rules/TheAncientMonumentsandArchaeologicalSitesandRemainsAct1958_12.03.2018.pdf)

Archaeological exploration and excavation are done by ASI. Protected monuments, archaeological sites, and national artefacts are maintained, preserved and safeguarded by it. Antiquities and monuments are chemically preserved by means of their particular branch. Additionally, ASI carries out numismatic, epigraphic, and architectural surveys and studies.

The group is in charge of both operations inside and outside of India. The archaeological survey of India has to follow the provisions mentioned in different Acts like the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and the Antiquities and Art Treasures Act, 1972, etc. the Ministry of Culture has an affiliated office called the ASI. More than 3650 ancient monuments, archaeological sites, and remnants of national significance are under the management of ASI in accordance with the terms of the AMASR Act of 1958. These can range from palaces, forts, step wells and rock-cut caves to temples, mosque, churches, tombs, and cemeteries<sup>13</sup>. Ancient mounds and other comparable sites that show the ruins of past habitation are also maintained by the ASI. ASI has worked in the fields of archaeology and cultural heritage conservation with numerous international organisations and institutes. Additionally, it has taken part in a number of UNESCO campaigns to save world heritage sites.

## **AN EVALUATION OF THE ARCHAEOLOGICAL SURVEY OF INDIA'S OPERATIONS**

Since this agency has been operational since before independence, monitoring it is very necessary and it is a significant undertaking to verify the operations on such a broad scale.

### **Wheeler committee**

After Independence, the Wheeler Committee, which was founded in 1965, made the initial effort. The "Archaeological Review Committee" was another name for it. This committee, led by former archaeologist Mortimer Wheeler, was established by the government to oversee the working of the ASI. In addition to the agency's Director General, the group comprised of three more professors from the universities which were designated as members. Many recommendations were given by the committee among which some of them were like the first suggestion advocated for distributing responsibilities equally. It also urged to expand the number of divisions to improve board performance and administration. The committee also suggested that deli circles be rearranged keeping in view the metropolitan importance. The

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<sup>13</sup> [https://web.archive.org/web/20120925065341/http://asi.nic.in/asi\\_monuments.asp](https://web.archive.org/web/20120925065341/http://asi.nic.in/asi_monuments.asp)



committee stated that there was a rapid increase in the era where the universities started to recognise archaeology. It was suggested that universities and ASI should collaborate to provide a high quality proper course and also motivated to open archaeological research centres abroad so that it is easy and better for Indian archaeologists to work in this field.<sup>14</sup> However, these recommendations were not adequately taken into account.

### **Estimates Committee Report**

A similar exercise was carried out in 1973-1974 by members of parliament who also served on the 5<sup>th</sup> Lok Sabha's Estimates Committee. The Chairman of the committee is R.K. Didit Sinha, a two-term member. However, the report's submission was postponed and delivered in 2005 for reasons that are currently unknown. The committee concluded that a lack of political will was the reason the suggestions were not carried out. It is thought that during the second phase, the Estimates committee conducted a more thorough evaluation and closely looked into how ASI's projects that had been declared were carried out. The creation of survey plans for monuments containing Ajanta paintings is specific focus of this report. An examination of antiquities is also included in the survey. Utilising maps of local revenue, the survey plan was created. This aided in defining the bounds of the protected zones surrounding landmarks and monuments. Its primary goal was to protect them and stop invasion. According to the report, in order to work on exploration and excavation projects, the Archaeological Survey of India (ASI) should corporate with state archaeology departments, universities and research institutes. The report proposed that ASI collaborate with universities and research organisations on a number of projects, including as the All India Survey, the Antiquities Remains Project, and it repeatedly emphasised the importance of their support.

### **Mirdha Committee**

Ram Niwas Mirdha acted as the committee's chair. The critical situation resulting from the monuments ongoing deterioration was brought to light in the report. An expert group on archaeology was formed by the Central Government in 1983 to conduct a thorough analysis of the measures needed to save India's historical sites. The committee's job was to create a comprehensive action plan that addressed every aspect causing harm to the monuments, including human-caused issues like vandalism and environmental degradation. The Mirdha

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<sup>14</sup> [https://ignca.gov.in/Asi\\_data/88664.pdf](https://ignca.gov.in/Asi_data/88664.pdf)

committee emphasized that the lack of allweather roads makes many significant monuments inaccessible during the rainy season. This is a tragic reality, and ASI needs to do all within its power to persuade the State Government to build long-term roadways that connect these historical places. This will enable yearly inspection.

### **Review Committee**

Indian archaeologist B.B. Lal, who was also ASI's Director General, oversaw a review group in 2001.

Lal has been a member of several UNESCO committees and was awarded the Padma Bhushan award for his service to the area of archaeology. It is important to note that neither ASI nor any official government website have the committee's report available. Moreover, it is still not digitalized. "The recommendations were widely accepted by the Government of India but no modifications were made", the 2013 CAG report stated.

### **Parliamentary Standing Committee**

This body, which was established in November 2005, gained notoriety under the name of parliament. Nilotpal Basu led the Standing Committee on transport, tourism, and culture. The Rajya Sabha received a report on how ASI was operating. The report mentioned many recommendations, some of which were regarding that the department was not led by a qualified and accomplished archaeologist. Public officer in the IAS cadre hold the position of Director General, but it ought to call for a particular degree so that the individual in charge of the office is qualified to manage it effectively, enhance excavation and conservation, and advance the riches of the country, has the required aptitude and interest to contribute. This will increase the location's appeal to tourist. Also all monuments should be developed and conserved equally, and visitor friendly amenities should come first. The ministry of home ministry should pay for security expenses such as CISF and SIS. Overall, this committee expresses worry over occurrences and the illegal encroachment of monuments and archaeological sites under protection. The committee is particularly worried about the ASI's inability to effectively reclaim the area from the encroachers. Thus, the committee fervently urges that an extensive evaluation of the encroachment of monuments and sites under archaeological protection be carried out nationwide as part of the Survey of India.

## **Moiety Committee**

The Union Law Minister and Justice at that time, Dr. Veerappa Moily, presided over this committee.

The committee's primary goal was to examine the effects of the 2010 AMASR (Amendment and Validation) Ordinance as well as the Amendment to the AMASR Act, 1958. Certain recommendations were made like it was advised to make reservations at a specific proportion. Large-scale project costs could be a necessary prerequisite for contractually completing archaeological documentation. This is the protocol that is adhered to. Also, a significant amount of conservation work has been noted in the monuments. Which are world heritage sites either because they are directly beneath the monuments or because they draw tourists and have international inspections or tickets, while the rest of the monuments are not paid that much of attention.

## **JUDICIAL INTERPRETATION**

The judiciary is committed to enforcing the constitutional duty of citizens to protect the environment.

It condemns the inaction of the state and emphasizes its obligation under article 51A to safeguard the environment. The state must also educate the public about their rights and responsibilities.

Environmental responsibility and awareness are highly valued and encouraged.

### **MC Mehta v. Union of India (Taj Trapezium case)<sup>15</sup>**

The Taj Mahal, a world heritage site and monument protected by AMASRA, was in danger due to emission from nearby industries. It was the PIL case that was heard by the Supreme Court for almost a decade. The court ordered that enterprises that are unable to obtain gas connections, as well as those that choose not to do so, should first make contact with or submit an application to the corporation or government in order to be allocated other plots in the industrial estate outside of the Taj Trapezium zone.

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<sup>15</sup> (1997) 2 SCC 353

**Preservation of Antiquities involved in Criminal Trials<sup>16</sup>**

The Orissa High Court has taken suo moto cognizance of a report filed by the court's Registrar. The report concerns the precious artefacts located in the state of Malkhanas, which are currently subject to criminal proceedings. These artefacts include statues made of metal and stone that have been stored in state warehouse for a very long period of time. However, since no one has been willing to claim them, the experiments involving them have been terminated. The court has given an order to transfer these artefacts to the state museum for proper and safe custody. This will enable interested academics and historians to research them. During judicial procedures, the items must be identified as antiquities and kept separate from other court property.

**Archaeological Survey of India v. Narender Anand and others<sup>17</sup>**

It was stated that “renewal” must be balanced by the word “repair” meaning that the owner of the existing building is not permitted to demolish it and erect a new one under the pretence of rehabilitation. To build something in the prohibited region, the permission has to be taken up by the Director General on the authority of Central Government. The public interest has been considered while granting this license. This is a purposeful order that permits public works, necessary projects, or any other kind of construction as long as it doesn't compromise the monuments preservation, safety, security, or accessibility, or that of its surrounds.

**Dr. Chandrika Prasad Yadav v. Union of India<sup>19</sup>**

Mauryan Empire archaeological artefacts can be found in the ancient site of Kumrahar in Patna. In addition, the recently unearthed Mira Bigha site in Jehanabad is yielding several archaeological treasures. But right now, thieves and looters looking for the idols are causing havoc at the Mira Bigha site. The AMASR Act of 1958 states that these historical heritage sites must be roped off resolutely and without difficulty, and that the surrounding territories must be designated as protected, restricted, and regulated zones.

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<sup>16</sup> AIR 1999 Ori 53

<sup>17</sup> Archaeological Survey of India v. Narender Anand and others, 2012 AIR (SCW) 1060

<sup>19</sup> 2004 Insc 222

**Vishwanath Pratap Singh v. Union of India<sup>18</sup>**

A PIL brought against the development project was decided by the Delhi High Court. Within 100 meters of the Siri Fort wall, personnel from the Delhi Development Authority scrape the ground. The only location in Asia and Europe where the Mongols were truly routed in their army repulsed in total humiliation is marked by the walls of Siri Fort. The wall's stones bear engravings that tell the grand tale of our nation's victory. The 1992 notification, which forbids construction within 100 meters of protected monuments and regulates construction within an area of 200 meters of such monuments, was violated, the court found after taking into consideration Article 49, schedule VII division of powers and AMASRA and AMPA Act.

**Indian National Trust for Art and Cultural Heritage and others v. State of Maharashtra<sup>19</sup>**

The High Court ordered the Municipal Corporation to consider the objections after listing the 77 properties under DC regulation 67, halting the destruction of those buildings.

**CONCLUSION**

In conclusion, safeguarding India's rich cultural legacy depends in a substantial way on rules and regulations pertaining to monument protection. The conservation of India's ancient monuments and sites has benefited greatly from the implementation of these rules and regulations by the

Archaeological Survey of India (ASI). In order to ensure the proper protection of these monuments, however, issues including insufficient budget, a lack of public awareness, and encroachment must yet be resolved. For India's cultural legacy to be preserved for future generations, cooperation between the government, ASI, local communities, and other stakeholders is required to overcome these obstacles. Large scale research and the support of NGOs are needed for cultural heritage management in order to raise public awareness and provide broader access to information. Examining the WH convention, other instruments, and Article 49 and 51A(f) and (i), India has a duty to raise public awareness of the value of preserving cultural heritage. However, no law provisions exist to designate any authority with this kind of obligation. The quantity of PIL's pertaining to heritage issues do not correspond

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<sup>18</sup> MANU/DE/1490/2002

<sup>19</sup> MANU/MH/0189/2006

with the size of the depth of our ancestry. This is most likely a result of the general public's lack of awareness.