

Heritage Legislation in Pakistan

by M. Rafique Mughal
Former Director General of Archaeology and Museums,
Government of Pakistan,
Honourary Director, Pakistan Heritage Society.

With this issue of the *World Heritage Newsletter*, we begin a new series of articles describing how different States Parties have given cultural and natural heritage "a function in the life of the community," through national policies and legislation.

At the time of Independence in 1947, Pakistan inherited a long tradition of heritage conservation and management from the British Indian government.¹ The earliest heritage legislation, the **Ancient Monuments Preservation Act, 1904 (AMP Act)**, was a logical culmination of half a century of experience gained in archaeological surveys, excavations, conservation of monuments and epigraphical research. It was designed to provide effective protection to monuments and moveable antiquities and to regulate excavations. The AMP Act empowered the Archaeological Survey of British India (the agency responsible for the enforcement of the Act) *inter alia* to acquire and give protection to any kind of cultural property and, if necessary, to acquire a monument by eminent domain to ensure its preservation and maintenance. The Survey could accept voluntary contributions and endowments for undertaking repairs of ancient remains; it had a right of access to monuments if they were privately owned; it protected religious buildings against misuse; and it controlled the movement and sale of antiquities. Under the Act, an archaeological site could be declared a protected monument and also acquired for excavation. No legislation, however, was provided to protect natural heritage and underwater archaeological remains.

At Independence, Pakistan, like India, adopted the AMP Act, which remained in place with few changes until 1968. In that year, Pakistan passed the **Antiquities Act**, which repealed the 1904 AMP Act but retained most of its clauses in modified form. Under the new Act, an Advisory Committee was created to advise on all heritage issues. It re-defined "ancient" monument as dating prior to May 1857. The AMP Act's two-fold classification of "ancient monument" and "antiquity" was replaced by the new categories of "movable" and

"immovable" antiquities with broad and almost all inclusive definitions. Among the highlights of the new legislation were, *inter alia*, provisions for assuming custody of antiquities by the federal government's Department of Archaeology in the absence of an owner, or to assume guardianship of monuments if their safety was in danger. It gave to the government the right of pre-emption if an antiquity was for sale. It also prohibited making copies, export or dealing in antiquities without authorization.

The current **Antiquities Act, 1975** (amended in 1990), re-defined an "ancient" object to be not less than 75 years old. It required that all accidental discoveries be reported to the federal Department of Archaeology. It also made the federal Government the owner of all buried antiquities discovered from any site, whether protected or otherwise. It banned all new construction within a distance of 200 feet from protected antiquities. All other provisions of previous Antiquities Act were retained. However, it contained no reference to the natural heritage.

The cultural heritage laws of Pakistan are uniformly applicable to all categories of sites regardless of their state of preservation and classification as monuments of national or world heritage importance. There is no separate organisation to look after any specific class of monuments such as the World Heritage sites. It was only to preserve Moenjodaro that a separate agency was created during the 1970s to implement the UNESCO-sponsored preservation programme. It has now been dissolved.

From the very beginning, the Department of Archaeology (now attached to the Ministry of Culture) has been the executing agency entrusted with the responsibilities of enforcing the heritage laws of the federal Government. Two provincial governments, Punjab and Sindh, have introduced their own legislation: **The Punjab Special Premises (Preservation) Ordinance, 1985** and **The Sindh Cultural Heritage (Preservation) Act, 1994**. There is no conflict at all between the legislative and administrative jurisdictions of the federal and provincial governments since their laws complement each other, and due to the supremacy of federal laws over those of other agencies.

At the national level, the Department of Archaeology maintains a register of 389 protected archaeological sites and monu-

ments located in all the provinces of Pakistan.² In addition, there are two provincial lists of Punjab and Sindh consisting of 233 and 426 protected sites respectively. There are 7 sites on the World Heritage list which are exclusively looked after by the federal Department of Archaeology.

Not all sites and monuments declared as protected "antiquities", "heritage" or "premises" are owned by the government. (The only class of monuments wholly owned by the federal government are the ~~the~~ World Heritage properties.) In fact, the number of sites and monuments owned by both the federal and provincial governments is less than one-quarter of the total number of protected sites. The Antiquities Act, however, guarantees that no changes or repairs can be made to a protected monument even if owned privately without approval of the official agencies concerned with it.

The heritage laws of Pakistan are generally effective for both national and World Heritage sites. However, enforcement of the Antiquities Act 1975 has brought out certain problems which will have to be addressed.

- a) In certain urban areas, it is increasingly difficult to stop modern encroachments around monuments. The executing agencies need authorization under the antiquity laws to demolish unauthorized structures which obstruct a clear view or mar the beauty of the monument. The situation at some monuments has become very serious.
- b) Stringent laws are needed to stop illegal digging and smuggling of the nation's heritage. The situation in the Gandhara region has become very serious indeed.
- c) It is also proposed that rules for conservation, repairs and restoration of sites and monuments be framed like those of the exploration and excavation rules. The conservation procedures laid down by Sir John Marshall in his Conservation Manual (1923) should be updated and modified according to the existing requirements.
- d) There is a need to create a separate cell within the Department of Archaeology to pay special attention to the problems of the World Heritage sites and to monitor the progress of preservation and management.

Notes

¹ Mughal, M.R., *Legislations for the Protection and Management of Archaeological Heritage of Pakistan*. Karachi: Department of Archaeology, 1995.

² Mughal, M.R., *Protected Archaeological Sites and Monuments in Pakistan*. Peshawar-Lahore: Pakistan Heritage Society, 1995.