

Effectiveness of Existing Heritage Legislations in Bangladesh

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Abstract:

The Heritage legislations play an important role in identifying, assessing, managing and controlling the heritage areas and edifices and also as a legal backing for implementation and monitoring the heritage sites. The present Heritage legislation is monument centric and limited to 462 identified monuments which were enlisted as protected by Department of Archaeology (DOA). In the absence of effective heritage regulations, the city's heritage assets are not properly managed resulted in decay, disharmony, lack of architectural and development control, not giving legal status to identified heritage buildings and demolitions, dilapidation of built structures and built urban form, losing the significance of urban design elements, improper management heritage areas and environmental problems. Therefore, there is a need for introducing heritage legislation by bringing an amendment to the Act.

Key Words: Legislation, Conservation, Cultural heritage, Department of Archeology

1.0 Introduction:

Bangladesh was a part of Ancient Bengal. It has a glorious and rich past historical, cultural heritage and diverse archeological treasure as back as 2000 BC. It has a vast number of heritage monuments and archaeological sites, mostly belonging to the medieval period. Most of the heritages such as stupas, viharas or monasteries, temples, pillars, mosques, roads, forts, tombs, bridges, palaces have still unexplored and unknown.

If the buildings and monuments are under the ownership of governments then their physical protection has been properly done. But when it comes to private ownership, the situation becomes pathetic (Hasan, 1971).

The Department of Archeology (DOA) is the main government body for the conservation, preservation, and promotion of our rich cultural heritage in Bangladesh. It is working under the Ministry of Cultural Affairs. It is also responsible for all kinds of excavation archaeological sites in Bangladesh. However, the total historical sites around the whole country are traced about 3000+. At present, DOA owns 462 heritage sites (GOB, 2016). Many of these archeological sites and monuments are at stake due to lack of proper preservation and management. Thus, Bangladesh is fast losing its heritage buildings/structures.

Heritage experts feel that the existing rules, regulations and acts related to the conservation of heritage structure/sites are not sufficient enough. The existing rules, regulations and acts needs

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to be amended for proper conservation. Presently, the Government is following a piecemeal approach to conserve these heritage structure/sites. In the absence robust heritage regulations and policies, the municipality or city corporation is not in a position to develop a harmonious heritage conservation plan. To prevent the heritage sites from destruction, it is imperative to take appropriate planning measures to conserve the heritage buildings and areas in a holistic approach. Hence, there is a need for evolving comprehensive heritage policies for conservation and protection of unexplored and unprotected heritage sites of Bangladesh in an integrated manner.

2.0 Issues of Unprotected/Unexplored Monuments:

Bangladesh has a very rich cultural past with several cultural heritages. The main problem with the unprotected/unexplored sites is the lack of a policy to protect them from destruction, illegal construction or encroachment. Many heritage buildings/sites in Bangladesh are unprotected and unexplored, some under the ownership of a public agency and some under private ownership. These heritage buildings/sites were considered as ‘less important’ and were not centrally protected. But these buildings/sites have the enormous potential to attract tourism (Rahman, 2007).

A random walk through the narrow streets of Birulia of Savar, Nagor Kasba of Munsiganj gave a glimpse of the numerous magnificent buildings, mostly of the colonial period. It would be rare to find a heritage building with absolutely no historical or architectural merit. But unfortunately, most of these buildings were neglected. It was observed that most of the local people were not even aware about the existence of a heritage building at the place, leave aside its importance.

Taking the case of Birulia and Nagor Kasba, the protection of these heritage buildings becomes even more difficult because people still live there. People cannot sacrifice their livelihood just for the sake of protecting a heritage building. But the point is that the present use of these buildings is not their best utilization. These heritage buildings have a great story behind them, or a marvelous architecture, which does not exist today. These are hubs with enormous potential to be developed as great tourist destinations.

3.0 Brief History of Heritage Conservation in Bangladesh:

Bangladesh was a part of ancient Bengal. In Bengal, the first instance of conservation was when the “Bengal Regulation (XIX)” was promulgated in 1810 AD. These regulations vested the government with the power to intervene whenever the public buildings were under threat of misuse. Then, Cultural heritage ushered in a new era when the “Ancient Monuments Preservation Act (VII)” was passed in 18, March 1904 by British India during the times of Lord Curzon. This Act provided effective preservation and authority over the monument, particularly those which were under the custody of individual or private ownership (Government of Bengal, 1886).

It is expedient to provide for the effective preservation and authority over the ancient monuments and for the first time, Sura Mosque of Ghoraghat was ordered to be protected in 1905. Later, more historic sites have been declared as protected by the British Government

such as Bagha Mosque in 1907 AD, Qutub Shah Mosque, Aurangzeb Mosque, Gorai/Gurai Mosque and Idrakpur Fort in 1909 AD, Masjidbari Mosque in 1912 AD, Khan Muhammad Mirdha Mosque and Saat Gumbudj Mosque in 1913 AD, Ishwaripur Turkish Bath in 1914 AD, Paharpur/Somapura Great Monastery in 1919 AD, Raja Harish Chandra Palace Mound, Raja Harish Chandra Buruj and Rajasan Mound 1920 AD, Darasbari Mosque in 1925 AD, Twin-hut Gopinath Temple in 1928 AD, Kodla Math in 1929 AD, Choto Sona Mosque in 1932 AD, Jagannath/Handial Temple in 1934 AD, Mathurapur Deul in 1935 AD (Ahmed, 1980). At the time of liberation in 1971 the number of protected monuments was only 152 which have now risen to 462.

4.0 Brief Overview of existing Heritage Conservation Legislations in Bangladesh

4.1 Legal protection of heritage from the constitution:

Article 23 and 24 of the constitution of Bangladesh say that the state shall adopt measures for the protection against disfigurement, damage or removal of all monuments, objects or places of special artistic or historic importance or interest. However, no law has yet been formulated under these articles for safeguarding the heritage artifacts.

4.2 Existing Heritage Conservation Legislations

There are various Acts, Ordinances, Code and Rules which constitute the primary instruments of heritage conservation in Bangladesh as well as for Dhaka. The main of them is Antiquity and Monuments Act 1968 which was amended in 1976. There are other rules and codes for development control in Dhaka which is also helpful for heritage conservation. They are as follows:

(a). Antiquity and Monuments Act 1968:

The Antiquity and Monument Act 1968 is the major regulations and main legal frame work for any kind of heritage conservation such as tangible both built and non-built heritage. The Existing Antiquity Act, 1968 was a largely unaltered version of the act during British rule. The 1976 amendment through an ordinance changed the words Pakistan to Bangladesh and rupee by taka.

(b). Dhaka Metropolitan Building Construction Rules 2008:

Section 61 of the Dhaka Metropolitan Building Construction, Development, Protection, and Removal Rule of 2008 provides some directives towards heritage conservation. Section 61 restricts construction within a 250-meter radius of the encircling area around heritage structures. This rule still needs to give specific guidelines for color, texture, material, façade design, height, function, orientation, and other design specifications for any new structures in the existing fabric, so that identical new structures may ensure the authenticity and integrity of the urban structures.

(c). Paurashava Act 2009:

Paurashava Act of 2009 however deals with some aspects of physical development but silent about any type of heritage conservation.

(d). Heritage Act on Feb 12, 2009:

The government passed the Heritage Act on Feb 12, 2009, declaring 93 aesthetic buildings, the whole of the Shankhari Bazar, and nine lanes from Farashganj and Sutrapur heritage sites. According to the Act, no construction is permitted within 250 metres of the protected zones of old Dhaka only.

(e). Bangladesh National Building Code 2012:

Chapter 3 of Bangladesh National Building Code 2012 addresses Conservation and rehabilitation of historical and cultural heritage.

As per the clause of 3.4.6, a clear space around each monument shall be formed as an immediate environmental protection to the monument. This area should follow, as the case may be, the original line of the enclosure wall.

Para 3.4.6.4 says that in urban areas or metropolitan cities an immediate buffer zone as set by the permitting authorities, but not less than 3 meters in width, adjacent to the heritage building, must be kept absolutely free of any structure or establishment of similar nature surrounding the heritage building or its part thereof.

(e). Draft Antiquities Act 2017:

Not yet approved. If it is approved, then Government would able to prohibit any construction around 250 metres of a heritage site in Bangladesh under provision of the Act.

5.0 Discussions:

5.1 Analysis of Existing Laws:

Under this study, the existing conservation legislations including acts, regulations and rules relating to the heritage conservation are analyzed. The legislations that are governing heritage monuments, buildings and areas have been examined to find out the effectiveness of legal tools for planning, conserving and managing the heritage areas in Bangladesh. From the study, it has been observed that, the available regulations are not adequate to address the issues of unprotected and unexplored heritage sites. Still, there is enough scope to include the heritage issue in the preparation of city plans and to include separate heritage regulations in the different cities of Bangladesh.

It is clear that most of the legislations have not been addressed to appreciate, recognize and value the systems. The heritage is threatened by many factors, namely uncontrolled developments without any harmony, environmental pressures, and lack of inventories of heritage resources, inadequate heritage legislations and development control, low levels of funding, inadequate expertise, and political will.

Besides, built heritage, including heritage buildings, monuments and areas are threatened by the decay, obsolescence, deterioration, ignorance. These areas are easily susceptible to economic pressure, vertical growth, vehicular traffic and other environmental problems. The development control includes zoning regulations, building bye-laws and sub-division regulations are not adequate to prescribe the comprehensive heritage rules and regulations for identifying and managing the heritage areas effectively. It is also not able to impose any design controls which results in failing to achieve the desired goals for conserving the existing old valuable buildings and precincts, before they get decayed or destroyed.

There are some important heritage monuments in the jurisdiction of different local government bodies such as City Corporation, municipality, Zila Parishad, Upazila Parishad that need to protect and preserve. But, they have no control over the areas beyond their limits.

5.2 Observations

Department of Archeology is the main custodian of all cultural heritage sites in Bangladesh. All sites are protected now by the Antiquity Act 1968. They must be under either “monuments” or “archeological sites”. However, no urban heritage sites are protected under this ordinances; although the Act states that “Immoveable antiquity” includes “... any urban site, street, group of buildings or public square of special value which the Government, being of the opinion that its preservation is a matter of public interest by reason of its arrangement, architecture or materials of construction, by notification in the official Gazette, declares to be an immoveable antiquity” (Antiquities Act, 1968; article 2, section d.(iii).6.).

This statement says that the Department of Archeology will cover those which has been declared heritage by the government; they will not take any initiatives to promote heritage conservation by themselves. Most of the heritage sites in Dhaka are located in the old Dhaka. They are around 15 in numbers and most of them are built heritage. The most important of them is Lalbagh Fort which is the oldest fort and the significant structure which represents the era of Mughal rulers in Bangladesh It was built around 1678 AD. It is a 73,000 sq. meter complex with monuments, gardens, water tank and surrounded by the protective walls. The department is currently trying to put the site on the UNESCO World Heritage List. However, the department can only control the site area itself; it has no control over the surrounding developments. Moreover, the department has no power to stop the illegal construction outside the heritage sites. It has fallen under RAJUK jurisdiction if it is in Dhaka and other cities are under the city corporations accordingly. The department tries to maintain the authenticity and integrity of a heritage site which is the most important qualifying factors for any conservation work.

6.0 Policy Concerns:

The Constitution of Bangladesh provides conservation of monuments at central level. The Department of Archeology (DOA) on behalf of the central government takes care of only the monuments that are identified to be of national importance. But, the other monuments (not protected or unexplored) don't take care of by the local governments. There is no compulsion to include conservation as a part of city planning; the various city planning agencies have shown little concern for heritage buildings. The Antiquity and Monument Act, 1968 (which

was amended in 1976) is the main legal framework for any kind of heritage conservation. There are other rules, regulations and Building codes which are also used for heritage conservation. The existing rules, regulations and acts related to heritage conservation are impractical as it has failed to throw any light on the conservation of these Unprotected and unexplored heritage structures.

There are many historical and architecturally important monuments in Bangladesh that are unprotected and there is no policy for the safeguard of these heritage buildings from destruction, illegal construction or encroachment. With an overburdened DOA, and shortage of government resources to fund the 'less important' heritage buildings, it might seem illogical to restore such monuments. But it is important to note that many unprotected monuments have the enormous potential to attract tourists and can generate huge revenues if it maintained properly.

7.0 Recommendations:

In absence of a strong heritage policy and effective legal backing, the heritage sites have suffered a lot. In order to address the heritage issues, framing heritage regulations for identifying, grading and significance assessment of heritage areas, identifying heritage zones into primary, secondary, tertiary, buffer zones and developing conservation management plans, extending incentives and encouraging public-private partnerships and creating awareness are inevitable for planning and conservation of heritage areas in the city for reviving the past glory (Shankar & Uma, 2012). A strong conservation policy will be formulated based on the issues identified under the study. The proposals includes conservation principles, guidelines for listing, grading, significance assessment, developing control/heritage zones, development control, incentives, public awareness for conservation of heritage sites in Bangladesh. The following policies/strategies are suggested for planning and conservation of heritage buildings and sites:

- i) All the monuments should be identified, listed, and graded based on historical, architectural, archaeological and cultural significance.
- ii) The listing of heritage buildings shall be based on the age of the building, its special value of architecture or cultural reasons or historical periods, its relevance to history, its association with well known character or event, its value as a part a part of group of buildings and the uniqueness of the building.
- iii) A separate Authority may be formed to formulate policy guidelines for development, re-development, additions, alterations, repairs, renovation and adaptable reuse of heritage building.
- iv) Existing heritage legislations are generalized for the entire country. Therefore, separate building bye-laws for heritage area are required.
- v) A separate regulations may be formulated for unprotected, unaddressed or unexplored heritages buildings and sites.

- vi) Architectural control and building bye-laws are to be strictly enforced by the authorities for heritages buildings.
- vii) Heritage buildings which are now under deteriorating condition can be put to re-use by restoring the building to an original character and strength.
- viii) Citizens should be involved and public awareness programs should be undertaken for proper implementation of heritage conservation/preservation projects.
- ix) Encourage heritage conservation projects under Public Private Partnership (PPP).
- x) In order to preserve of heritage edifices, the best ways to acquire the property under the appropriate laws from the private owners.
- xi) Provide adequate compensation and innovative financial incentives should be provided to the private owners to maintain and preserve the heritage buildings.
- xii) A provision for conservation of heritage sites should also be kept in Local Government bodies Acts/Regulations so that they can preserve and conserve heritage in their jurisdiction.
- xiii) Outsourcing to private firm can be a solution to maintain and preserve the heritage buildings and sites.

8.0 Conclusion:

For the unprotected and unexplored sites, it is of vital importance to frame a policy for these heritage buildings for their protection against destruction, illegal construction and encroachment. Because, there is no government agency to take care of these structures. The private sector has to take the initiative to take up some heritage buildings having historical significance or architectural merit, and then promote these places for the same. Once a demand is developed for these places, the market will make sure that no such heritage building is left out.

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