

INTERFACE BETWEEN TRADITIONAL URBANISM AND LEGISLATIVE FRAMEWORK

A.K. JAIN*

Abstract

India as a repository of traditional urbanism is unique. Unfortunately in the recent decades, in a zeal to develop the modern cities and 'property' oriented approach of development, the treasure of our traditional urbanism has often been trampled upon. Quite often it is argued that there can be no preservation without legislation and regulations. The prevailing understanding of legislation is a hierarchy of laws – (i) the Constitution (ii) The Acts (Central and State), (iii) Regulations, bye-laws, rules and mandatory administrative/government orders and (iv) Statutory Plans, Zoning, development Controls and architectural controls. No doubt, these can be effective in conservation of traditional urbanism and heritage, but in a democratic context where people are involved, the 'legislation' is to be seen in a broader context. There are various examples of 'para-legal' measures, which can be successfully adopted for conservation of the heritage/urbanism by way of a participatory process.

India as a repository of traditional urbanism is unique. The variety of its built environment – settlements, villages, heritage structures, artifacts, streets, parks, water bodies and precincts of historic, aesthetic, cultural and religious significance is amazing. Unfortunately in the recent decades, in a zeal to develop the modern cities and 'property' oriented approach of development, the treasure of our traditional urbanism has often been trampled upon. Borrowed concepts of urban 'aesthetics' have overlooked the historic, cultural and symbiotic contents of the traditional urbanism. The consequence is evident in overall decay of the traditional settlements. The explanation for this state of affairs is beyond the hackneyed reasons of population growth, changing life styles, urbanization and the forces of economic growth. The malaise is much deeper – which includes the lack of awareness, sensitivity and concern for the traditional values, incapacity of institutional framework, non-responsive organisations, flaws in planning, design and development, control process, legal and enforcement inadequacies and deficiencies in implementation and maintenance. The fall out of cut throat business competition and political rivalries are exhibited by indiscriminate pasting of the posters, ugly hoardings, signages and outdoor advertisements which deface and damage the Indian cities across the board.

*Commissioner (Plg.), Delhi Development Authority
E-mail : akjain@del3.vsnl.net.in

Antecedents

Although there is not much legislative history of urban conservation in India, the initial efforts can be attributed to Patrick Geddes, who promoted the cause of urban improvement by 'Conservative Surgery' about a century ago. As a result of his efforts urban improvement schemes were prepared for more than 30 cities in India, Urban Improvement Acts were enacted in various States/Cities and number of Urban Improvement Trusts were constituted by the Government. However, subsequent conservation efforts focused more upon the buildings and monument. In 1904, the Central government enacted for the first time, the Ancient Monument Preservation Act, 1904, which was intended "to provide for the preservation of ancient monuments and objects of archaeological, historical or artistic interest" and to prevent the excavation by unauthorised persons of sites of historic interest and value. The Act was applied to ancient monuments which were declared as "protected monuments" and invested the executive with sufficient legal authority in regard to the monuments in private ownership and the Archaeological Survey of India came into being.

The concept of a monument of 'national importance' was introduced by the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951. About 450 monuments and sites in Part B States were included in the national list. Thereafter the Ancient Monuments and Archaeological Sites and Remains Act, 1958, which was broadly modeled on the lines of the Act of 1904, repealed the Acts of 1904 and 1951. This Act in the interests of uniformity and integral policy, proposed to transfer some of the powers conferred on the District collectors to the Director-General of Archaeology. In India several state and Central Acts on conservation of monuments had been framed from time to time (Box-1):

BOX-1

Acts relating to preservation of Ancient Monuments and Archaeological Sites and Remains in India:

1. The Ancient Monuments and Archaeological Sites and Remains Act, 1958.
2. The Ancient Monuments and Archaeological Sites and Remains Rules, 1959.
3. The Antiquities and Art Treasures Act, 1972.
4. A.P. Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1960.
5. Assam Ancient Monuments and Archaeological Sites and Remains Act, 1959.
6. Gujarat Ancient Monuments & Archaeological Sites and Remains Act, 1965.
7. Jammu and Kashmir Ancient Monuments Preservation Act, 1977.
8. Jallianwalla Bagh National Memorial Act, 1951.
9. Madras Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1966.
10. M.P. Ancient Monuments and Archaeological Sites and Remains Act, 1964.
11. Maharashtra Ancient Monuments and Archaeological Sites and Remains Act, 1961.
12. Mysore Ancient and Historical Monuments and Archaeological Sites and Remains Acts, 1962.
13. Orissa Ancient Monuments and Preservation Act, 1956.
14. Punjab Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1964.
15. Rajasthan Monuments, Archaeological Sites and Antiquities Act, 1961.
16. Rajghat Samadhi Act, 1951 (of Central Govt.).
17. U.P. Ancient and Historical Monuments and Archaeological Sites and Preservation Act, 1957.
18. Victoria Memorial Act, 1903.
19. West Bengal Preservation of Historical Monuments and Objects and Excavation of Archaeological sites Act, 1957.
20. Museums Act, 1961.
21. Salar Jung Museum Act, 1961.

Other related Acts

- i) Town and Country Planning Acts
- ii) Delhi Development Act, 1957 and other Development Authority Acts.
- iii) Delhi Urban Art Commission Act, 1973
- iv) Urban Improvement Acts
- v) Environment (Protection) Act, 1986
- vi) Various Municipal Acts
- vii) The West Bengal Prevention of Defacement of Property Act, 1976 (extended to Union Territory of Delhi in 1982).
- viii) Various DCR (Development Control Rules), Building Bye-laws and Regulations.
- ix) Delhi Municipal Corporation (Tax on Advertisements other than Advertisements published in Newspapers) Bye-laws, 1996.
- x) New Delhi Municipal Council (Pasting of Bills & Advertisement) Bye-laws, 1995.

Often it is argued that there can be no preservation without legislation and regulations. The restoration could preserve only a few sites, while legislation may preserve thousands. Legislation does not restore buildings but it stops the free run of bulldozers. The prevailing understanding of legislation is a hierarchy of laws – (i) the Constitution (ii) The Acts (Central and State), (iii) Regulations, bye-laws, rules and mandatory administrative/government orders and (iv) Statutory Plans, Zoning, development Controls and architectural controls. No doubt, these can be effective in conservation of traditional urbanism and heritage, but in a democratic context where people are involved, the ‘legislation’ is to be seen in a broader context, beyond its punitive aspect. There are various examples of ‘para-legal’ measures, which have been and can be successfully adopted for conservation of the heritage/urbanism by way of a participatory process. These are often in the form of :

- Listing and Identification of Heritage precincts
- Policy Planning and Design Guidelines
- Charter (e.g. The Athens Charter, 1937)
- Code of Conduct and Ethics (Social/Community, professional and religious)
- Incentives (such as Transferable Development Rights, waive of Building Bye-laws, such as set backs, Right, Land use and FAR flexibility through urban design and architectural controls).
- Standards, norms and specifications
- Empowerment Zone Partnership and Community Enterprise Promotion

Listing and Identification of Historic Urban areas/buildings

Heritage precincts areas and places should be listed with following details:

- Building, complexes, open maidan/areas including public or private.
- Gardens
- Natural land area – Mountain, hills, reservoir, riverbanks, seashores, forest area, open area, etc.

After listing the administration/municipalities should declare such areas as “heritage area” where demolition or changes or construction should be regulated/prohibited for controlled. The lists and records of these heritage areas should be widely disseminated to the public, on web sites and to all concerned departments.

Policy Planning and Design Guidelines (PPDGs)

The PPDGs should be evolved for historical areas, which would not only conserve sub areas but also help to revitalize, and maintain them. Saving of ancient monuments, built heritage sites and natural heritage is not sufficient. It would be imperative for city administration to evolve policy for conservation and planning framework. There should involve guidelines for achieving an environment which is hygienic, beautiful and free of pollution. The regulation and control over hoardings, signages, advertisements and street furniture, should also be framed.

For the revitalization of historic centres the policy can be the key guidelines:

- High-quality refurbishment standards for the restoration of areas and buildings of historic and cultural significance:
- Restoration work to adapt a building to new demands:
- Traffic improvements and pedestrianisation to increase public use and improve business opportunities:
- Reintegration of historic centres into mainstream city activity involves the clear definition of functional requirements:
- Improved environmental standards:
- Tourism and cultural opportunities aimed at the attraction of business:

All towns, cities and regions display a particular blend of problems and potentials – this blend is the manifestation of both external influences and internal characteristics. The style of approach to regeneration has evolved over the years, and policy and practice reflect dominant socio-political attitude. The regeneration of urban areas can be seen as an important element of regional and national success.

Urban regeneration is a comprehensive and integrated vision and action which leads to the resolution of urban problems and which seeks to bring about lasting change in the economic, physical, social and environmental condition of an area that has been subject to change.

Box-2 Some Important Policy Planning Guidelines in U.K.

PPG1 – General Policy and Principles	This sets out the general principles for the operation of the planning system, including the determination of planning applications.
PPG-2	National planning policy in the green belts.
PPG-3 – Housing	General policies in relation to housing, affordable housing, housing land availability and new settlements.
PPG-4 – Industrial and Commercial Development and Small Firms	The role of the planning system in relation to industrial and commercial development.
PPG-5- Simplified Planning Zones	The general nature and role of SPZs.
PPG-6 – Town Centres and Retail Developments	Including the sequential approach to selecting sites for development for retail employment leisure and other key town centre uses.

PPG-12 – Development Plans and Regional Planning Guidance	Government Policy in relation to the Development Plan process.
PPG-15 – Planning and the Historic Environment	Comprehensive advice on controls for the protection of historic buildings and conservation areas.
PPG-16 – Archaeology and Planning	Policy on archaeological remains on land
PPG-23 – Planning and Pollution Control	Including advice on issues relating to contaminated land and waste.

The Athens Charter, 1931

The Athens conference of 21-30 October 1931 concluded with an exhaustive Charter for the protection of monuments.

I. Doctrines, General Principles

When as a result of decay or destruction restoration appears to be indispensable, and when the occupation of buildings ensures the continuity of their life, the historic and artistic character of the past should be respected, without excluding the style of any given period.

II. Administrative and Legal Measures

The differences existing between various legislative measures adopted by different countries for the protection of monuments of artistic, historical or scientific interest are due to the difficulty of reconciling public law with the rights of individuals. Legal and administrative measures should be keeping with local circumstances and with the trend of public opinion so that the least possible opposition is encountered, with due allowance made for the sacrifices owners of property may be called upon to make in the general interest. Public authorities in each country should be empowered to take conservation measures in case of emergency.

III. Artistic Enhancement of Ancient Monuments

In the construction of buildings, the character and external aspect of cities should be respected, with special consideration given in the neighbourhood of ancient monuments. All forms of publicity, erection of unsightly telegraph poles, tall shafts and noisy factories should be suppressed. Certain groupings and particular picturesque perspective treatment should be preserved. A study should also be made of the ornamental vegetation for preserving their ancient character.

IV. Restoration Materials

All the resources at the disposal of modern technique and reinforced concrete should be judiciously used, particularly in cases where their use makes it possible to avoid and dangers of dismantling and reinstating the portions to be preserved.

V. Deterioration of Ancient Monuments

In each country, the architects and curator of monuments threatened by atmospheric agents should collaborate with specialists in the physical, chemical and natural sciences to determine the methods to be adopted in specific cases. The International Museums Office should keep itself informed of the work being done in each country and mention should be made of it in its publications. The removal of works of art from the surroundings for which they were designed should be discouraged in principle. By way of precaution, original models should be preserved or casts should be taken wherever they do not exist.

VI. Technique of Conservation

In the case of ruins, scrupulous conservation is necessary, and steps should be taken to reinstate any original fragments (anastylosis) whenever possible: the new materials used should in all cases be recognizable. When it is not possible to preserve excavated ruins, accurate records should be compiled

before filling-in operations are undertaken. With regard to consolidation or partial restoration of other monuments, a thorough analysis should be made of the defects and nature of decay as each case needs to be treated individually. Technical work undertaken in excavations and preservations of ancient monuments calls for close collaboration between the archaeologist and the architect.

VII. Conservation of Monuments and International Collaboration

The question of conservation of the artistic and archeological property of mankind interests the community of the States, as wardens of civilization they should closely collaborate with each other. Qualified institutions and associations should also be given the opportunity of manifesting their interest without any manner prejudicing international public law.

The best guarantee in the matter of preservation of monuments and works of art derives from the respect and attachment of people themselves. People should be taught to abstain from disfiguring monuments, and take pride in the concrete testimonies of all ages of civilization.

Each country or the institution created for this purpose should publish an inventory of monuments, with photographs and explanatory notes. They should maintain records of preservation work and feature them in their publications, with copies deposited with the International Museum Office.

Resolution of the International Committee on Intellectual Co-operation, July 23, 1932

The International Committee on Intellectual Co-operation requests the Assembly to address the following recommendations to Member States:

That States acting in accordance with the League of nations Covenant should establish closer and more concrete cooperation with each other for purposes of ensuring the conservation of monuments and works of art;

That member States should ask educationists to teach children and young people to respect monuments, whatever the civilization or period to which they belong and that this educative action should also be extended to the general public with a view to associating the latter in the protection of the records of any civilization.

Recommendations of the Assembly of the League of Nations, October 10th, 1932

The Assembly, approving the resolution adopted by the International Committee on Intellectual Co-operation and acceding to the latter's request that it should communicate to the members of the league the recommendations drawn up by the Athens Conference concerning the conservation of historical monuments and works of art,

Entrusts to the Intellectual Co-operation Organisation the task of transmitting the said recommendations to the Governments on its behalf.

Code of Conduct and Ethics

To make conservation and urban regeneration a sustainable proposition, it has to be self-supporting and self-starting. For this, a code of conduct has to be evolved which should promote:

- (i) Investment of the Community/NGOs and their accountability
- (ii) Incentives
- (iii) Bankable project approach;

- (iv) Mobilising private sector investments;
- (v) Minimum intervention of controlling authority
- (vi) Leverage strategy to trigger the process of urban renewal by private/community investment.

It is pertinent to create partnerships and commitments among the stakeholders and actors who have an interest in the conservation areas. Private investments can be attracted through tax incentives, and financial and economic viability can be ensured by taking up 'bankable projects and financial institutions. Technical assistance to heritage conservation projects can be provided by the local bodies/NGOs. Procedures and Code of Conduct will have to be evolved for effective participation of the NGOs, the Cooperative, Community and the private sector. The Code of Conduct should also cover the following:

- Dissemination of information, public awareness, documentation related to conservation/ heritage;
- Training and capacity building for craftsmen, professionals and local bodies; and
- Implementation, monitoring and awards for projects of Conservation of heritage,
- Restoration, urban renewal and rehabilitation,
- Repair and maintenance of heritage buildings,
- Traditional crafts/craft person;
- Professional ethics (including for the cooperatives, RWAs, NGOs and the community)

Incentives and Waivers

Incentives and encouragement should be given to the owners and occupants of heritage buildings/zones and to help in matters concerning listing, preparation of interventions and implementation. Such incentives may comprise the following:

- (i) Adaptive reuse projects with the involvement of private/public sector investment;
- (ii) Land-based 'remunerative' projects and other 'non-conservative' conservation/rehabilitation projects;
- (iii) Tourism development projects which generate profits;
- (iv) Home improvement loans for home owners/renters through formation of cooperatives as has been tried in Mumbai for repair of chawls;
- (v) Infrastructure and upgradation schemes for Inner city/heritage zones and financial resources geared towards urban heritage zones;
- (vi) Area-based transformational urban renewal of dilapidated old areas and public housing, and
- (vii) Enveloping of selected Inner City areas by community initiative through minimum controls and incentive zoning (realization of FAR incentive and mixed land use). Often the Plans provide for FARs, which are generally much less than the existing. This is a major disincentive for urban renewal, and as a result massive unauthorised reconstruction and conversions of land use take

place. It is necessary not only to allow minimum existing FAR and ground coverage, but also give an incentive FAR and adopt mixed land use zoning.

In Mumbai the Transfer of Development Rights (TDR) is being applied to privately held/owned premises which are listed monuments, located in prime locations,. To encourage owners of such monuments to invest in the conservation and renovation of such monuments and discourage them to aim only at the demolition of these buildings, they shall be offered alternative plots of land for development to compensate for the loss of development potentials in the plots occupied by the monuments, and to cover renovation costs of these. An indispensable pre-condition is of course the availability of government owned land that can be bartered for the TDR arrangement. Waivers of building bye-laws for protection of heritage include set back, marginal open spaces, height, etc. The W\waiver of master plan reservations if they affect heritage sites should also be considered. These demand a framework of comprehensive development plans for heritage zones and definition of clear goals of the conservation policy emerging from ground level experience.

Standards, Norms and Specifications

For conservation of traditional urban centres and heritage, the standards, norms and specifications often prove to be quite effective. Some of these can be mandatory, while many others can be semi-legal by way of administrative/government orders or by way of approved of plans and schemes. The pertinent areas of the standards, norms and specifications can be the following:

- Urban Design Guidelines
- Architectural Controls (height, regulated Zone, prohibited zone, elevation, style, openings, building bulk, FAR, ground coverage - inclusive buildings, landscape, utilities, public toilets etc.).
- Development specifications (roads, footpaths, solid waste disposal, drainage, electricity, water bodies, rain water harvesting etc.).
- Structure/Building Standards (safety, retrofitting, specification for building materials and quality of construction, adoption of National Building Code, etc.).
- Maintenance Guidelines/Code.
- Hoardings, advertisement boards, signages, outdoor display structures, Dish antenna, communication towers etc.

A major para legal provision can be Empowerment Zone Partnerships and Community Enterprise Promotion for urban regeneration. Various types of partnerships prevail in urban sector, such as given below:

Types of Partnerships

Type	Area of coverage	Range of partners	Activities
Development partnership joint venture	Single site of small area e.g. town centre.	Private developer, housing association, local authority	Commercial/non profit development for mutual benefit.
Development trust	Clearly defined area for regeneration e.g. neighbourhood or estate	Community based organisation with aid from local authorities.	Community based regeneration, concerned with creating community benefits.
Informal arrangement	District or city-wide.	Private sector-led. Sponsored by chamber of commerce/ development agency.	Place-marketing, promotion of growth and investment.
Agency	Urban / sub-regional.	Terms of reference from sponsoring agency through an agency / development company independent of the partners.	Multiple task orientation, usually within a designated time-frame.
Strategic	Sub-regional / metropolitan	All sectors	Broad strategy for development, as a catalyst / guide. Implementation is often through third party vehicles, including development companies.

For greater success of the partnerships it is necessary to further the concept of “Empowerment Zone Partnership”, which requires deregulation, devolution and decentralisation together with coordination, allocations and leveraging at all the levels – Government, Local Authority and Community:

Government Level	Local Authority	Community Level
<ul style="list-style-type: none"> • Remove regulatory barriers • Simplify programme rules • Co-ordinate programme • Invest broad resources 	<ul style="list-style-type: none"> • Invest state resources/funds • Decentralise • Devolve & Decontrol • Co-ordinate programme and agencies • Simplify procedures and approvals 	<ul style="list-style-type: none"> • Involve the entire community • Plan comprehensively • Leverage private resources • Streamline planning, monitoring, implementation processes and ensure accountability

CONCLUSION

In a zeal to develop the “modern” cities and ‘property’ oriented approach of development, the treasure of our traditional urbanism has often been trampled upon. Beyond the hackneyed reasons of population growth, changing life styles, urbanization and the forces of economic growth, the malaise is much deeper. It includes the lack of awareness, sensitivity and concern for the traditional values, incapacity of institutional framework, non-responsive organisations, flaws in planning, design and development control process, legal and enforcement inadequacies and deficiencies in implementation and maintenance.

In a democratic context where people are involved, the ‘legislation’ is to be seen in a broader context, beyond its punitive aspects. There are various examples of ‘para-legal’ measures, which have been successfully adopted for conservation of the heritage/urbanism by way of a participatory process. These require concerted actions by the government, local bodies and the community.

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No: PS/Commr.(Plg.)2006/

Dated the 6th December, 2006

To

Mr. Deependra Prasad,
International Network for Traditional Building,
Architecture & Urbanism, India, (INTBAU)
S-335, Panchsheel Park,
New Delhi-110017.
E-mail: deependra@intbau.in

Dear Shri Deependra,

With reference to your e.mail dated 16.11.06, I have prepared a paper on "Interface Between Traditional Urbanism and Legislative Framework" (placed below). I hope you find it suitable for the Conference.

Regards,

(**A. K. JAIN**)

Encl: As above.