

## Acts & Rules

An Act further to amend the Jammu and Kashmir “Ancient Monuments Preservation Act, Samvat 1977.

Be it enacted by the Jammu and Kashmir State Legislature in Sixty-five year of Republic of India as follows:-

1. Short title and commencement-

2. (1) This Act may be called the “**Jammu and Kashmir Ancient Monuments Preservation (Amendment) Act, 2010**”.

(2) It shall come into force on the date of publication in the Govt. Gazette.

2. Substitutions of expressions:-- In the Jammu and Kashmir Ancient Monuments Preservation Act, Samvat 1977 (hereinafter referred to as ‘the Principal Act’) for the words “Superintendent of Archaeology” wherever occurring, the words Director, Archaeology shall be substituted.

3. Amendment of Section 2 Act of Samvat 1977---In section 2 of the principal Act:-

(i). in clause (1) for the words “artistic interest” the words “artistic interest and has been in existence for not less than one hundred years shall be inserted.

(ii). After clause (2), the following clause shall be inserted, namely:-

(3) “Archaeological Officer” means any officer of the Archaeology Department, not below the rank of Deputy Director,

(iii). After clause (3), the following clause shall be inserted namely:-

(3A) “Construction” means any erection of a structure or a building, including any addition or extension thereto, either vertically or horizontally but does not include any reconstruction, repair or renovation of an existing structure or building or construction, maintenance and cleansing of drains or drainage works or public latrines, urinals and similar conveniences or the construction and maintenance of works meant for providing supply of water for public or the construction maintenance, extension and management for supply and distribution of electricity to the public, or provision for similar facilities for public

(iv) after clause (6), the following clause shall be added namely:-

(7) “prescribed” means prescribed by rules framed under this Act: and

(8) “state Protected Monument” means any monument declared to be protected under this Act

4. Amendment in section 4, Act V of Samvat 1977---in section 4 of the principal Act—

(i) for the words “minister” wherever occurring the words “Director Archaeology” shall be substituted and

(ii) in sub-section (6) for the words “may assume” the words “may with prior sanction of the Government, assume” shall be substituted

2. Amendment in section 5, Act V of Samvat 1977—In section 5 of the principal Act

(i) In sub-section (1), for the words “Government for the preservation” the words “Government, within a specified period for the preservation” shall be substituted

(ii) After sub-section (3), following sub-section shall be inserted namely:-

(3-A) if any owner or other person competent to enter into an agreement under sub-section (2) for the maintenance of protected monuments refuses or fails to enter into any such agreement within the specified time, the Government on the motion of Director, Archaeology may make an order providing for all or any of the matters specified in sub-section (2) and such order shall be binding on the owner or such other person and on every person claiming title to the monument from, through or under the owner or such other person and

(iii). In sub-section (6), the full stop at the end shall be substituted by colon and thereafter the proviso shall be added, namely:-

“Provided that where the agreement is terminated by the owner, he shall pay to the Government, the expenses, if any, incurred by the Government on the maintenance of the monument during the five years immediately preceding the termination of the agreement or, if the agreement has been in force for a shorter period, during the period the agreement was in force”

3. Amendment in section 9, Act V of Samvat 1977-in section 9 of “ the principal Act” in sub-section (1) for the words “one thousand rupees” the words “one lakh rupees” shall be substituted

4. Amendment of section 10-A Act V of Samvat 1977—in section 10-A of the “principal Act:-

(i) In sub-section (1) after clause (b), following clause shall be inserted namely:-

“(bb) prohibiting any person including the owner or occupiers of the monument from the constructing any building within the protected area or utilizing such area or any part thereof in any manner without the permission of the Government”

(ii) In sub-section (3), for the words “two hundred rupees” the words “twenty thousand rupees” shall be substituted; and

(iii) After sub-section (4), the following sub-section shall be added namely:-

(5) The government may, by order, direct that any building constructed by any person within a protected area in contravention of provisions of sub- section (I) shall be removed within a specified period and if the person refuses or fails to comply with the order, the Deputy Commissioner, on the motion of Director Archaeology may cause the building to be removed and the person shall be liable to pay cost of such removal to be recovered as arrears of land revenue .”

8. Insertion of section 10-B and 10-C – After section 10-A of ‘ the principal Act’ , the following sections be inserted , namely :-

10-B, Prohibited and regulated areas, - Every area, beginning at the limit of the protected area or the protected monument, as the case may be, and extending a distance of 100 meters in all directions shall be prohibited area in respect of such protected area or protected monument, both in respect of protected monuments, declared as such or which are proposed to be declared as such protected monument under section 3:

Provided that the Government may on the recommendation of the Director, Archaeology by notification in the Official Gazette, specify an area exceeding the distance of hundred meters to be the prohibited area.

10-C. Construction in and around protected monument . ---- No new construction shall be allowed in around the prohibited area, as specified or declared under this Act:

Provided that the Government may, on the recommendation of the Director, Archaeology and in the public interest, create amenities in the area.

9. Amendment of section 11 and 12, Act V of Samvat 1977, ---- In sections 11 and 12 of ‘ the principal Act’ , for the expression “ Minister ” , wherever occurring , the expression “ Director Archeology ” shall be substituted .

10. Amendment of section 13, Act V of Samvat 1977, --- In section 13 of ‘ the principal Act’ , for the words “ or the Minister has, under the same section, accepted ” , the words “ or has accepted ” shall be substituted .

11. Amendment of section 15, Act V of Samvat 1977, --- In section 15 of ‘ the principal Act’ , in sub section (2), for the words “ twenty rupees ” , the words ‘ one thousand rupees ” shall be substituted .

12. Amendment of section 16, Act V of Samvat 1977, --- In section 16 of ‘ the principal Act’ , for the words “ five thousand ” , the words ‘ twenty thousand ” shall be substituted.

13. Amendment of section 17, Act V of Samvat 1977, --- In section 17 of ‘ the principal Act :-

( i ) In sub- section (2), for the words “ five hundred rupees” , the words “ twenty thousand rupees or with imprisonment which may extend to three months or with both” shall be substituted and ;

(ii) In sub- section (4), for the words “ an officer of customs, or an officer of police of a grade not lower than Assistant Inspector or Deputy Inspector” , the words “ an officer of police not below than the rank of Deputy Superintendent of Police or an officer of Archaeology Department not below the rank of Assistant Director” shall be substituted .

14. Amendment of section 18, Act V of Samvat 1977, --- In section 18 of ‘ the principal Act’ , in sub- section (4) for the words “ five hundred rupees ” , the words ‘ twenty thousand rupees or with imprisonment which may extend to three months or with both” shall be substituted.

15. Amendment of section 20-B Act V of Samvat 1977, --- In section 20-B of ‘ the principal Act’ , in sub- section (4) for the words “ one thousand rupees ” , the words ‘ twenty thousand rupees shall be substituted.

16. Insertion of section 22-A and 22-B, Act, V of Samvat 1977---, After section 22 of ' the principal Act' , following sections shall be added namely :-

“ 22-A Creation offences to be cognizable ,--- Notwithstanding any thing contained contrary in the Code of Criminal Procedure, Samvat, 1989, an offence under section 16 of sub-section (2) of section 17 or sub- section (4) of section 18 of this Act shall be deemed to be cognizable offences within the meaning of that Code.

22-B Delegation of Powers- The Government may, by notification in the Government Gazette direct that any power conferred on it by or under this Act, shall, subject to such conditions as may be specified in the notification, be also exercisable by such officer or authority as may be notified”.

## 1. **Short title, extent and commencement**

1. This Act may be called the J&K Ancient Monuments Preservation Act, 1977
2. It extends to the whole of the J&K State. It shall come into force on the 1<sup>st</sup> day of Baisakh, 1978.

## 2. **Definition**

In this Act, unless there is anything repugnant in subject or context:-

- (1) “Ancient monument” means any structure, erection or monument, or any tumulus or place of interment, or any cave, rock-sculpture, inscription or monolith, which is of historical, archaeological or artistic interest.
- (2) “Antiquities” include any movable object which the Govt., by reason of their historical or archaeological associations, may think it necessary to protect against injury, removal or dispersion
- (3) Omitted
- (4) “maintain” and “Maintenance” include the fencing, coving in, repairing and cleansing of a protected monument, and the doing of any act which may be necessary for the purpose of maintaining a protected monument of securing convenient access thereto.
- (5) “land” includes a revenue free estate, a revenue paying estate and a permanent transferable tenure whether such estate or tenure be subject to incumbrance or not,

(5a) "Minister" means the Minister in charge of Archaeological Department, or

(6) "owner" includes a joint owner invested with powers of management on behalf of himself and other joint owners, and any manager or trustee exercising powers of management over an ancient monument, and the successor in title of any such owner and the successor in office of any such manager or trustee

Provided that nothing in this Act shall be deemed to extend the powers which may be exercised by such manager or trustee.

### **3. Protected monument**

(1) The Government may, by notification in the Govt. Gazette, declare an ancient monument to be a protected monument within the meaning of this Act.

(2) A copy of every notification published under sub-section (1) shall be fixed up in a conspicuous place on or near the monument, together with an intimation that any objections to the issue of the notification received by the Govt. within two months from the date when it is so fixed up will be taken into consideration.

(3) On the expiry of the said period of two months, the Govt. after consideration the objections, if any, shall confirm or withdraw the notification.

(4) A notification published under this section shall, unless and until it is withdrawn, be conclusive evidence of the fact that the monument to which it relates is an ancient monument within the meaning of this Act.

### **4. Acquisition of rights in or guardianship of an ancient monument**

(1) The Superintendent of Archaeology, with the sanction of (the Government) may purchase or take a lease of any protected monument.

(2) The Superintendent Archaeology, with the like sanction, may accept a gift or bequest of any protected monument.

(3) The owner of any protected monument may by, written instrument, constitute the Minister the guardian of the monument, and the Minister may, with the sanction of the Government accept such guardianship.

(4) When the Minister has accepted the guardianship or a monument under sub-section (3), the owner shall, except as expressly provided in this Act, have the same estate, right, title and interest in and to the monument as if the Minister had not been constituted guardian thereof

(5) When the Minister has accepted the guardianship of a monument under sub section (3), the provisions of this Act relating to agreements executed under section 5 shall apply to the written instrument executed under the said sub-section.

(6) Where a protected monument is without an owner, the Minister may assume the guardianship of the monument

#### **5. Preservation of ancient monument by agreement**

(1) The Superintendent of Archaeology may, with the previous sanction of (the Government) propose to the owner to enter into an agreeemtn with (the Government) for the preservation of any protected monument.

(2) An agreement under this section may provide for the following matters, or for such of them as it may be found expedient to include in the agreement.

(a) The maintenance of the monument

(b) Custody of the monument, and the duties of any person who may be employed to watch it

(c) The restriction of the owner's right to destroy, remove, alter or deface the monument or to build on or near the site of the monument

(d) The facilities of access to be permitted to the public or to any portion of the3 public and to person deputed by the owner or the Superintendent of Archaeology to inspect or maintain the monument

(e) The notice to be given to the Government in case the land on which the monument is situated is officered for sale by the owner, and the right to be reserved to the Govt. to purchase such land, or any specified portion of such land as its market value

(f) The payment of any expenses incurred by the owner or by the Govt. in connection with the preservation of the monument

(g) The proprietary or other rights which are to vest in (the Govt.) in respect of the monument when any expenses are incurred by the Government in connection with the preservation of the monument

(h) The appointment of an authority to decide any dispute arising out of the agreement and

(i) Any matter connected with the preservation of the monument which is a proper subject of agreement between the owner and the Government.

(3) An agreement under this section may be executed by the Superintendent of Archaeology on behalf of (the Government) but shall not be so executed until it has been approved by (the Government)

(4) The terms of an agreement under this section may be altered from time to time with the sanction of the Govt. and with the consent of the owner

#### **6. Owner under disability or not in possession**

(1) In the case of village property, the headman or other village officer exercising powers of management over such property may exercise the powers conferred upon an owner by section 5

(2) Nothing in this section shall be deemed to empower any person not being of the same religion as the persons on whose behalf he is acting to make or execute an agreement relating to a protected religious worship or observances of that region

#### **7. Enforcement of agreement**

(1) If the Superintendent of Archaeology apprehends that the owner or occupier of a monument intends to destroy, remove, alter, deface or imperil the monument or to build on or near the site thereof in contravention of the terms of an agreement for its preservation under section 5, the (Deputy Commissioner) on the motion of the Superintendent of Archaeology may make an order prohibiting any such contravention of the agreement.

(2) If an owner or other person who is bound by an agreement for the preservation or maintenance of a monument under section 5, refuses to do any act which is in the opinion of the Superintendent of Archaeology necessary to such preservation or maintenance or neglects to do any such act within such reasonable time as may be fixed by the Superintendent of Archaeology,

the Superintendent of Archaeology, may authorize any person to do any such act, and the expense of doing any such act or such portion of the expense as the owner may be liable to pay under the agreement may be recovered from the owner as if it were an arrear of land revenue.

(3) A person aggrieved by an order made under this section may appeal to the Minister, who may cancel or modify it and whose decision shall be final.

### **8. Application of endowment to repair of an ancient monument**

(1) If any owner or other person competent to enter into an agreement u/s 5 for the preservation of a protected monument, refuses or fails to enter into him by the Superintendent of Archaeology and if any endowment has been created for the purpose of keeping such monument in repair or for that purpose among others, the Superintendent of Archaeology may institute a suit in the court of the District Judge, or , if the estimated cost of repairing the monument does not exceed on thousand rupees, may make an application to the District Judge for the proper application of such endowment or part thereof.

(2) On the hearing of an application under sub-section (1), the District Judge may summon and examine the owner and any person whose evidence appears to him necessary, and may pass an order for the proper application of the endowment or of any part thereof, and any such order may be executed as if it were the decree of a Civil Court.

### **9. Compulsory purchase of ancient monument**

(1) If (the Govt.) apprehends that a protected monument is in danger of being destroyed, injured or allowed to fall into decay, (the Govt.) may proceed to acquire it under the provisions of the Land Acquisition Act, as if the preservation of a protected monuments were a “public purpose” within the meaning of that Act.

(2) The powers of compulsory purchase conferred by sub-section (1) shall not be exercised in the case of

(a) Any monument which or any part of which is periodically used for religious observances or

(b) Any monument which is the subject of a subsisting agreement executed under section 5.

(3) In any case other than the case referred to in sub-section (2) the said powers of compulsory purchase shall not be exercised unless the owner or other person competent to enter into an agreement under section 5 has failed, within such reasonable period as the Superintendent of Archaeology may fix in this behalf, to enter into an agreement proposed to him under the said section or has terminated or given notice of his intension to terminate such an agreement.

**10-A. A Power of Govt. to control mining etc near ancient monuments**

(1) If the Govt. is of opinion that mining, quarrying, excavating, blasting and other operations of a like nature should be restricted or regulated for the purpose of protecting or preserving any ancient monument, the Govt. may, by notification in the Govt. Gazette, make rules:

- (a) Fixing the boundaries of the area to which the rules are to apply
- (b) Forbidding the carrying on of mining, quarrying, excavating, blasting or any operation of a like nature except in accordance with the rules and with the terms of a license and
- (c) Prescribing the authority by which and the terms on which license may be granted to carry on any off the said operations

(2) The power to make rules given by this section is subject to the condition of the rules being made after previous publication.

(3) A rule made under this section may provide that any person committing a breach thereof shall be punishable with fine which may extend to two hundred rupees

(4) If any person or occupier of land include in a notification under sub-section (1) proves to the satisfaction of the Government that he has sustained loss by reason of such land being so include the Govt. shall pay compensation in respect of such loss.

**11. Maintenance of certain protected monuments**

(1) The Minister shall maintain every monument in respect which the Govt. has acquired any of the rights mentioned section 4 or which the Govt. has acquire under section 10

(2) When the Minister has accepted the guardianship of a monument u/s 4, he shall, for the purpose of a maintaining such monument have access to the monument a all reasonable times, by himself or his agents, subordinates and workmen, for the purpose of

inspection the monument, and for the purpose of brining in such material and doing such acts as he may consider necessary or desirable for the maintenance thereof

**12. Voluntary contribution**

The Minister may receive voluntary contributions towards the cost of maintaining a protected monument and may give orders as the management and application of any funds so received by him

Provided that no contribution received under this section shall be applied to any purpose other than the purpose for which it was contributed

**13. Protection of place of worship from misuse, pollution or desecration**

(1) A place of worship or shrine maintained by the Govt. under this Act shall not be used for any purpose inconsistent with its character.

(2) Where the Superintendent of Archaeology has, under section 4, purchased or taken a lease of any protected monument, or has accepted a gift or bequest, or the Minister has , under the same section accepted the guardianship thereof, and such monument, or any part thereof is periodically used for religious worship or observances by any community, the Superintendent of Archaeology in consultation with the Deputy Commissioner shall make due provision for the protection of such monument, or such part thereof from pollution or desecration

(a) by prohibiting the entry therein, except in accordance with conditions prescribed with the concurrence of the persons in religious charge of the said monument or part thereof, of any person not entitled so to enter by the religious usages of the community by which the monument or part thereof is used or

(b) by taking such other action as he may think necessary in this behalf

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