

**JOINT/SELECT COMMITTEE
REPORTS OF LEGISLATIVE
ASSEMBLY - 1932**

**The Ancient Monuments Presentation
(Amendment) Bill**

List of Reports of Select or Joint Committees
presented in the Legislative Assembly in 1932.

Serial No.	Short title of the Bill.	Date of presentation.	Remarks.
1.	The Indian Partnership Bill.	26.1.32.	
2.	The Wire and Wire Nail Industry (Protection) Bill.	15.2.32.	
3.	The Bamboo Paper Industry (Protection) Bill.	16.2.32.	
4.	The Bengal Criminal Law Amendment (Supplementary) Bill.	22.2.32.	
5.	The Sugar Industry (Protection) Bill.	23.2.32.	
6.	The Foreign Relations Bill.	29.2.32.	
7.	The Indian Air Force Bill.	10.3.32.	
8.	The Ancient Monuments Presentation (Amendment) Bill.	5.4.32.	
9.	The Port Haj Committees Bill.	5.9.32.	
10.	The Tea Districts Emigrant Labour Bill.	5.9.32.	
11.	The Code of Criminal Procedure (Amendment) Bill.	12.9.32.	
12.	The Children Pledging of Labour Bill.	19.9.32.	
13.	The Criminal Law Amendment Bill.	7.11.32.	
14.	The Indian Merchant Shipping (Amendment) Bill.	14.11.32.	
15.	The Indian Tariff (Ottawa Trade Agreement) Amendment Bill.	12.12.32.	

LEGISLATIVE ASSEMBLY.

We, the undersigned, Members of the Select Committee to which the Bill to amend the Ancient Monuments Preservation Act, 1904, for certain purposes, was referred, have considered the Bill, and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

2. *Clause 3.—Proposed section 20.*—The intention of the proposed section 20 is that when the Governor General in Council has reason to believe that antiquities exist in any area, he should be empowered to protect them against destruction or removal and to preserve them for the benefit of the nation generally. Accordingly, the section empowers him to declare the area to be protected, and thereupon ownership and possession of all antiquities buried in the area vest in the Government. The intention is not, however, to interfere in any other way with the rights of the owners or occupiers of land in the protected area, such as their rights to sink wells, excavate foundations for buildings, and so on. We consider that the section does not bring this out sufficiently clearly, and we have amended it accordingly. We have made a consequential amendment in clause (a) of subsection (1) of proposed section 20A (now 20B). These two sections, as amended by us, now definitely limit the powers of the Governor General in Council to the restriction and regulation of "excavation for archæological purposes".

Proposed section 20A.—The Bill as drafted provided merely for the declaration of a protected area, and for the acquisition of the area if after investigation it is found that the area contains an ancient monument or antiquities of national interest and value. It made no provision whereby the officers of Government or licensees would have power to enter upon a protected area in order to make the necessary investigations. We consider it desirable that officers of the Archæological Department, and licensees acting under the supervision of these officers, should have this power, and that a statutory provision should be made for the payment of compensation to the owners or occupiers of land for all damage done. We have inserted a new section 20A accordingly, whereunder these officers and licensees may enter upon any private land, but only with the written permission of the Collector, who will see to it that the entry does not cause unnecessary inconvenience.

In this connection we considered the question of inserting a provision in the Act requiring that the stage of investigation should not be prolonged indefinitely to the prejudice of the owners and occupiers of land, but we are of opinion that a statutory provision might be undesirably inelastic. We have, however, received an assurance

from Government that the rules will provide that ordinarily the stage of investigation shall not be allowed to continue for longer than one year, and that after one year the area shall be either abandoned or acquired under the provisions of section 20C.

Clause 4.—We have added this clause in order to clear up a doubtful point in the interpretation of proposed section 10A (4), read with section 21 of the main Act. It may be argued that if the Local Government under section 10A (4) should decide that no compensation is payable, then the aggrieved person has no remedy under section 21, as this section relates to disputes as to the amount of compensation and does not specifically cover the case where the dispute is whether any compensation at all is payable. In order to provide with certainty that section 21 shall apply in all cases we have amended it slightly.

We discussed at length the proposal that provision should be made in the Bill itself that in granting licences preference should be given to Indians or to Indian associations. We received an assurance from Government that no conflict between applicants is likely to arise for many years to come, as applications will be very few; and we were also assured that in the event of a conflict arising the policy of Government would be to give preference to Indian applicants. With these assurances we are content.

We also considered at length the proposal to insert in the Bill provisions which will restrict the rule-making powers of Government in relation to the division of antiquities between a licensee discovering them and the Government. Our desire is that the interests of India should be paramount, and that no antiquity should be given to a licensee which would be of national importance in an Indian national collection. Here again, we are assured that this is the policy of Government, which, following the precedents of Egypt and other countries, will be expressed in the rules made under the Act. As it would be extremely difficult to frame suitable statutory provisions, we accept the assurance and leave the Bill unamended in this respect. In this connection it may also be mentioned that we are in general agreement that human relics of historic or religious importance should never be allowed to leave India and should always remain the property of the nation.

3. The Bill was published in the Gazette of India dated the 12th September, 1931.

4. We think that the Bill has not been so altered as to require re-publication, and we recommend that it be passed as now amended.

COWASJI JEHANGIR (JUNIOR),
 F. NOYCE.
 J. C. FRENCH.
 N. N. ANKLESARIA.
 ZIAUDDIN AHMAD.
 J. RAMSAY SCOTT.
 MOHD. YAMIN KHAN.
 *HAR BILAS SARDA.
 B. N. MISRA.
 LAL CHAND.
 HAJI ABDOOLA HAROON.
 *AMAR NATH DUTT.
 *LALCHAND NAVALRAI.
 *GAYA PRASAD SINGH.

NEW DELHI;
 The 5th April, 1932.

* Subject to a minute of dissent.

MINUTES OF DISSENT.

We are unable to accept the principles underlying the Bill. The new (proposed) section 20 of the Ancient Monuments Act, VII of 1904, is the most important section of the Bill under discussion and embodies two principles, namely (i) that from the date of notification antiquities buried in "protected" areas shall be and remain the property, and shall be deemed to be and remain in the possession, of Government, until ownership thereof is transferred, and (ii) that some of the antiquities, however valuable, found buried in notified area, may be given away to foreign scholars and exploiters to be taken away by them to foreign countries. We find ourselves unable to accept these two principles.

2. In the first place we draw attention to the fact that the Indian Legislature, being a subordinate and not a sovereign Legislature, cannot extinguish private rights of property. So far as we understand the legal position, property rights in subterranean antiquities are on no different footing from those in subterranean commercial articles, for example minerals; at any rate this is the position in some provinces, e.g., Bengal. The notes on the clauses state that clause 3 purports to vest all rights in antiquities found in "protected" areas in Government, so that any person, including the original owner, removing them would be guilty of theft. In our opinion this is a case where the Indian Legislature purports to extinguish rights of private property as recognised by the law of the country so far. We fear the Bill is *ultra vires* in this sense.

3. We consider that the Bill is fundamentally defective in as much as it does not make statutory provision for certain highly important matters which in our opinion should be provided for in the Act itself and not by rules thereunder. We may give a few illustrations:

(i) We think a formal statutory provision should be inserted providing for compensation to all those whose property rights are expropriated or to whom loss, damage or inconvenience is caused.

(ii) Statutory provision should be made for the following and similar matters:—

(a) The excavation of places, e.g., stupas, the sites of tombs or *chhatris*, stone monuments to heroes erected on or near the spot where they died, the sites marking the birthplace of India's famous men, should not be allowed to be excavated by any foreign or non-Government agency except where the applicant for the license to excavate belongs to the community concerned and is domiciled in India.

(b) Remains of religious or historical personages and relics, antiquities or other objects connected or associated with their lives should on no account be allowed to be removed from India.

(iii) Our most fundamental objection is to the non-insertion of a clause declaring that valuable antiquities shall be and remain the property of the nation and shall not under any circumstances be allowed to be removed out of the country. The removal of many Indian antiquities and relics has already done incalculable and irreparable damage with the result that for a serious study of India's ancient history one has to rely to a very large extent on collections abroad.

These priceless treasures cannot now be got back. The question we have put to ourselves is whether the Bill as amended will help to stop the removal from India of such additional antiquarian treasures as may be discovered by licensed excavators from abroad. We are satisfied that the Bill should, but does not provide reasonable safeguards against such further damage. Not only does it purport to legalise a serious invasion of private property rights but is a menace against the entire Indian nation's rights of property in India's antiquities. Its real object is to facilitate and legalise the removal of irreplaceable antiquities.

It may be argued that the rules will in all probability provide for the division of only those antiquities of which duplicates are available. We fear such an argument is based on a misapprehension. Duplicates of antiquities are extremely rare since they were seldom manufactured *en masse*. What may appear to the present generation a mere duplicate may on closer examination in the light of information not available at present prove to be an original in its own way. The date or age may vary. The material may be different. The artistic technique may not be the same. We may illustrate our point by reference to the controversy raging round a certain pillar which, though generally ascribed to Emperor Asoka, does not bear the same type or extent of polish as the average Asokan pillar and is therefore held by some not to be Asokan. Even coins and seals which appear to be mere duplicates are often found on closer examination to possess peculiarities. The presumption that duplicates can safely be parted with is in practice untenable and may prove mischievous. Broadly speaking, antiquities cannot furnish genuine duplicates such as can be given away without prejudice to the national interest.

Secondly a country of the size of India where numerous museums are already in existence and many more are springing up—e.g., the valuable collections of the Bharat Kala Bhavan, Benares—has an almost inexhaustible capacity for absorbing even genuine duplicates. There is no reason why even when a genuine duplicate is available it should be allowed to go abroad rather than be made over to a public museum somewhere in the country. Students of history and archæology already find themselves handicapped by the fact that archæological material is not easily available locally or within a reasonable distance.

We take the strongest possible exception to the view that Indian antiquities should be treated as semi-commercial wares, some of which can be sold or given away in exchange for financial or other assistance in carrying on exploration work. If foreign students of Indian archæology, whether individuals or bodies, are not prepared to assist India for the mere love of their work and its cultural value to humanity, but insist upon immediate and tangible recompense in the form of share in the finds, India should, in the interests of the present and future generations, decline the offer with thanks. We are sure that this is the view generally held among those communities which are primarily concerned in the preservation of subterranean antiquities. Rather than permitting the removal of her treasures abroad and thus risk their loss for

ever, India should continue to let them remain buried under ground till such time as her own children are ready to take up the work. While she should always be ready to welcome genuine scholars, she should not give facilities to gamblers in antiquities or commercialised explorers. Archaeological research in India has so far maintained a comparatively non-commercial character; we would like it to continue to remain uncontaminated by the commercialisation implicit in the permission granted to foreigners to excavate on the understanding that some of the finds may be divided. Antiquities must not be treated as if they were minerals.

(iv) It is essential that in a matter like this Indian opinion should be allowed to have an effective voice in the administration of the law relating to archæology. We can not shut our eyes to the fact that while the Egyptian Government could at once proceed to the length of cancelling Mr. Howard Carter's excavating license the Government of India as at present constituted cannot be expected to take a similarly strong line of action against European and American licensees. A statutory body, not merely advisory but to a large extent administrative, should

On the eve of constitutional reforms, and the impending changes in the form of Government, I am of opinion that a measure like this might have waited for 2 or 3 years. I do not think that objects of archæological interests buried underground are likely to be lost or destroyed during this time. But if a legislation like this is at all to be taken up now, I should like to emphasise

3rd April, 1932.

The word "area" in section 20 (I) is too wide and would include even a private building. I would restrict its meaning to only open plots and lands to be declared a protected area.

2. I am in favour of antiquities found from private property which comes under the protected area to be divided with the original owner of the property if he wishes to have a share in them.

LAHORE ; }
2nd April, 1932. }

be constituted. It should be fully representative of Indian non-official opinion and interests. The framing of the rules should be entrusted to it. In particular the rules relating to the disposal of finds should be framed and administered by such a body.

4. Finally we hold that a period of one year for the completion of the investigation inserted in the Bill is too long and should be curtailed to six months. Further, any outside interference with the owner's property rights should take place only after he is fully compensated.

Although we do not press for a statutory provision for the following matters, we urge that the rules to be framed must provide for them.

Such matters are :

(a) Before any license is granted for excavation in a notified area a public notice shall be given giving a description of the area and the reasons which Government have for permitting excavation in that area and inviting both objections and applications from intending licensees.

(b) In issuing licenses preference should always be given to Indians.

AMAR NATH DUTT.

HARBILAS SARDA.

that no objects of antiquarian interest, which are unique in character, and which are of national importance, should be allowed to be taken out of India; and this should be provided, if possible, in the Act itself, instead of in the Rules, which are subject to revision without reference to the Legislature.

GAYA PRASAD SINGH.

3. I am not content with the assurance regarding granting preferential licences to Indians. I would permit licences being given to only Indians in the first instance and to others only if Indian licensees are not at all forthcoming. I would suggest this proviso to be made a part of the Act.

4. I am in favour of some non-official members of the Central Legislature and some official experts to form a Committee to frame rules under the Act.

LALCHAND NAVALRAI.

[As amended by the Select Committee.]

[Words printed in italics indicate the amendments suggested by the Committee.]

A

BILL

TO

Amend the Ancient Monuments Preservation Act, 1904, for certain purposes.

WHEREAS it is expedient to amend the Ancient Monuments Preservation Act, 1904, for the purposes hereinafter appearing; It is hereby enacted as follows :— VII of 1904.

1. This Act may be called the Ancient Monuments Preservation (Amendment) Act, 1932.
Short title.

2. After section 10 of the Ancient Monuments Preservation Act, 1904 VII of 1904.
Insertion of new section 10A in Act VII of 1904. (hereinafter referred to as the said Act), the following section shall be inserted, namely :—

“ 10A. (1) If the Local Government 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 Local Government may, by notification in the local official Gazette, make rules—

- Power of Local Government to control mining, etc., near ancient monument.
- (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 licence, and
 - (c) prescribing the authority by which, and the terms on which, licences may be granted to carry on any of 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 owner or occupier of land included in a notification under sub-section (1) proves to the satisfaction of the Local Government that he has sustained loss by reason of such land being so included, the Local Government shall pay compensation in respect of such loss.”

3. For section 20 of the said Act and its heading Substitution of new "Excavations", the following sections and heading shall be substituted, namely :—

"Archæological Excavation."

20. (1) If the Governor General in Council, after consulting the Local Government, is of opinion that excavation for *archæological purposes* in any area should be restricted and regulated in the interests of archæological research, the Governor General in Council may, by notification in the Gazette of India specifying the boundaries of the area, declare it to be a protected area.

(2) From the date of such notification all antiquities buried in the protected area shall be the property of Government and shall be deemed to be in the possession of Government, and shall remain the property and in the possession of Government until ownership thereof is transferred ; but in all other respects the rights of any owner or occupier of land in such area shall not be affected.

20A. (1) Any officer of the Archæological Department or any person holding a licence under section 20B may, with the written permission of the Collector, enter upon and make excavations in any protected area.

(2) Where, in the exercise of the power conferred by sub-section (1), the rights of any person are infringed by the occupation or disturbance of the surface of any land, the Government shall pay to that person compensation for the infringement.

20B. (1) The Governor General in Council may make rules—

- (a) prescribing the authorities by whom licences to excavate for *archæological purposes* in a protected area may be granted ;
- (b) regulating the conditions on which such licences may be granted, the form of such licences, and the taking of security from licensees ;
- (c) prescribing the manner in which antiquities found by a licensee shall be divided between Government and the licensee ; and
- (d) generally to carry out the purposes of section 20.

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

(3) Such rules may be general for all protected areas for the time being, or may be special for any particular protected area or areas.

(4) Such rules may provide that any person committing a breach of any rule or of any condition of a licence shall be punishable with fine which may extend to five thousand rupees, and may

further provide that where the breach has been by the agent or servant of a licensee the licensee himself shall be punishable.

20C. If the Governor General in Council is of opinion that a protected area contains an ancient monument or antiquities of national interest and value, he may direct the Local Government to acquire such area, or any part thereof, and the Local Government may thereupon acquire such area or part under the Land Acquisition Act, 1894, as for a public purpose." 1 of 1894.

4. In section 21 of the said Act,—

Amendment of section 21, Act VII of 1904.

- (a) the words "amount of", where they first occur, shall be omitted, and
- (b) for the words "touching the amount" the words "in respect" shall be substituted.

GOVERNMENT OF INDIA.
LEGISLATIVE ASSEMBLY
DEPARTMENT.

Report of the Select Committee on the
Bill to amend the Ancient Monuments
Preservation Act, 1904, for certain
purposes, with the Bill as amended.