

Navigating Legal Dilemmas: Antiquities Act vs. Civil Law in Bangladesh - A Comprehensive Analysis

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Abstract

This research conducts an in-depth exploration of the legal intricacies surrounding the protection and preservation of antiquities within Bangladesh. Focusing on the intersections and conflicts between the Antiquities Act and Civil Law, the study reveals the nuances, challenges, and legal dilemmas that arise in safeguarding the nation's cultural heritage. By dissecting key case studies and providing a thorough analysis of the legal framework, the research aims to offer comprehensive insights and foster a balanced approach to navigating the complex relationship between these legal domains. Ultimately, the goal is to contribute to the discourse on heritage conservation by proposing an effective and nuanced legal framework for addressing conflicts between the Antiquities Act and Civil Law in Bangladesh.

Introduction

Cultural heritage preservation is a significant issue in many countries, especially those with rich histories like Bangladesh. The Antiquities Act of 1968 was established as a primary legal instrument to protect the nation's historical assets, including artifacts, monuments, and archaeological sites. However, its implementation often comes into conflict with civil rights and ownership claims governed by civil law. This paper aims to provide a comprehensive analysis of the intersections and tensions between the Antiquities Act and Civil Law in Bangladesh, offering recommendations to harmonize these legal frameworks for more effective heritage preservation.

Importance of Cultural Heritage

Bangladesh's cultural heritage reflects its rich and diverse history, spanning millennia and encompassing the legacy of multiple civilizations, including ancient Bengal, the Mauryas, Guptas, Palas, and Mughals. This heritage is a valuable asset, not only for its historical significance but also as a foundation for national identity and a source of tourism revenue.¹ However, the preservation of this heritage is fraught with challenges. Urban expansion, economic development, and a lack of

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1. Joseph P. Fishman, *Locating the International Interest in Intranational Cultural Property Disputes*, 35 Yale JIL, 2010, pp. 347-404, 369

awareness often lead to the destruction of antiquities. Furthermore, the legal mechanisms intended to safeguard these assets frequently encounter resistance from civil property claims, highlighting the need for a well-coordinated legal framework.

Overview of the Antiquities Act in Bangladesh

The Antiquities Act, enacted in 1968, was designed to safeguard antiquities, defined as any object or structure that is over 100 years old and holds historical, artistic, or scientific value.² The law grants the government the authority to declare certain sites or objects as protected antiquities and imposes restrictions on their ownership, sale, and alteration.

Objectives of the Antiquities Act

The main objectives of the Antiquities Act are:

- To protect and preserve ancient monuments, sculptures, manuscripts, and archaeological sites.
- To regulate the sale and transfer of ownership of antiquities.
- To prevent the illegal export of cultural heritage artifacts.
- To authorize the government to take possession of or acquire antiquities from private ownership for the purpose of preservation.

Key Provisions and Their Implications

- **Declaration of Protected Antiquities:** The government can declare any object, structure, or site as a protected antiquity if it holds significant cultural or historical value.
- **Restrictions on Ownership:** Once declared as protected, the ownership and transfer of antiquities are subject to strict regulations, often limiting private use and alterations.
- **Penalties for Non-Compliance:** Violations of the Act, such as illegal excavation or unauthorized alterations, can result in fines and imprisonment.

While these provisions aim to ensure the preservation of heritage, they often lead to legal disputes, particularly when private ownership rights are challenged.

Civil Law and Property Rights in Bangladesh

Civil Law in Bangladesh is largely based on English Common Law, which governs issues such as property ownership, land disputes, inheritance, and personal rights. Under Civil Law, individuals are guaranteed the right to own property, which can create friction when such property is identified as an antiquity subject to the Antiquities Act.³ This is particularly relevant in cases where heritage sites or objects are located on privately-owned land or have been passed down through generations.

2. *Antiquities Act 1968*, Bangladesh

3. *Bangladesh Civil Law Statutes*, pp. 65-70

Challenges Posed by Civil Law

- **Conflicting Claims:** Ownership rights under Civil Law may conflict with the government's authority under the Antiquities Act to seize or restrict the use of antiquities.
- **Compensation Issues:** The process of compensating property owners for loss of ownership or use of antiquities is not clearly defined, leading to legal disputes.
- **Lack of Awareness:** Many property owners are unaware of the legal implications when their land or possessions are designated as antiquities.
- **Economic Impacts:** Restrictions on the use or sale of property designated as an antiquity can lead to financial losses for owners, further fueling resistance to preservation efforts.

Legal Dilemmas Arising from the Intersection of Antiquities Act and Civil Law

The interaction between the Antiquities Act and Civil Law often results in legal dilemmas that are complex and multi-faceted. These include the conflict between public interest (heritage preservation) and private rights (ownership and use of property).

Ownership Disputes

One of the primary dilemmas is the conflict between the Antiquities Act, which allows the government to take control of historically significant objects and sites, and the Civil Law's protection of private property rights.⁴ Owners may contest government actions on the basis that their legal rights are being infringed upon without due compensation or process.

Compensation for Acquisition

The Antiquities Act does not provide a robust framework for compensating owners when their property is designated as a protected antiquity. In contrast, Civil Law emphasizes the need for fair compensation when property is acquired by the state. This discrepancy often results in protracted legal battles.

Enforcement of Preservation Laws

Enforcing the Antiquities Act has proven challenging due to overlapping jurisdictions and the reluctance of local courts to prioritize heritage preservation over civil property claims.⁵ Many cases of illegal demolition, modification, or sale of antiquities stem from a lack of clear enforcement mechanisms.

4. *The Code of Civil Procedure*, Act No. V of 1908, p. 195

5. Johan Josefsson and Inga-Lill Aronsson, 'Heritage as Life-Values: A Study of the Cultural Heritage Concept', *Current Science*, 2016, pp. 91-98

Case Studies

Encroachment and Preservation Challenges of Lalbagh Fort

Lalbagh Fort, an iconic 17th century Mughal monument in Dhaka, Bangladesh, has faced significant challenges in preserving its historical integrity. Encroachments and legal disputes have disrupted efforts to maintain the fort as a heritage site. This case study highlights key issues, including illegal constructions, conflicting ownership claims, and inadequate enforcement of heritage laws.

Lalbagh Fort, initiated by Subedar Shaista Khan in 1678 and left incomplete in 1684, stands as a symbol of Mughal architecture and history. Initially spanning 22 acres, as per the Dhaka Development Plan Report-1917 and British-era land surveys, its current area has reduced to 18 acres due to encroachments and land grabbing.

Encroachment and Legal Disputes

Two two-story houses stand on the western boundary wall of the fort. Despite a High Court directive in 2010 to vacate all private structures within the fort's boundaries, these buildings remain intact. The owners claim that the area was excluded from the original fort construction and possess government survey documents recording the land in their names.

- **Legal Challenges:** The High Court had directed the demolition of private structures inside the fort, reconstruction of the boundary wall, and enforcement of the Archaeology Act-1978, the Construction Rules-2008, and Dhaka Metropolitan Building Rules. However, implementation remains stalled due to ongoing legal appeals by the occupants in the Appellate Division.
- **Ownership History:** The houses were constructed in 1954 on the unfinished western boundary wall. Ownership transferred over decades, complicating efforts to reclaim the land.

Impact of Encroachments

1. **Loss of Historical Land:** Approximately four acres of the original fort area have been encroached upon, with land grabbers occupying portions of the eastern and western walls.
2. **Unauthorized Constructions:** Despite a prohibition on multi-story buildings within 150 feet of the fort, 16 such structures have been built along its southern boundary.
3. **Commercial Intrusion:** Shops and stalls, including a Puri-Shingara shop, operate near the northern entrance. Vendors have damaged the fort walls by driving nails into the 340-year-old structure.
4. **Defacement:** Posters and banners cover portions of the fort's walls, particularly at the southern junction.

Cultural and Legal Implications

Encroachments threaten the fort's structural integrity and diminish its cultural value. The failure to enforce court orders undermines public trust in heritage preservation and highlights gaps in legal and administrative mechanisms.⁶

Recommendations for Action

1. **Clear Legal Resolution:** Accelerate the resolution of pending legal cases to enable the eviction of occupants and the restoration of the fort's boundaries.
2. **Enhanced Enforcement:** Strengthen the implementation of heritage laws, including the Archaeology Act and construction regulations.
3. **Public Awareness Campaigns:** Educate locals about the historical significance of Lalbagh Fort and the importance of its preservation.
4. **Government Intervention:** Acquire disputed lands and allocate resources for the restoration of the fort's original boundaries and structures.
5. **Monitoring and Protection:** Establish a dedicated body to monitor encroachments and ensure the fort remains protected from future violations.

The case of Lalbagh Fort underscores the challenges of balancing heritage preservation with modern urban pressures. Resolving the legal, social, and administrative barriers is essential to restore the integrity of this historical landmark. Effective collaboration among stakeholders can safeguard Lalbagh Fort as a testament to Bangladesh's rich cultural history.

Encroachment and Legal Challenges at Mahasthangarh Fort

Mahasthangarh Fort, located in Bogra, Bangladesh, is one of South Asia's most significant archaeological sites and is included on the UNESCO World Heritage List. Spanning 394 acres, the fort contains evidence of civilizations from the pre-Mauryan, Mauryan, Gupta, Pala, Sena, and Muslim periods. Despite its historical importance and legal protection under the Antiquities Conservation Act of 1968, the site faces severe threats from encroachment and illegal construction, highlighting the ongoing struggle between heritage preservation and local settlement demands.

Historical Context

Mahasthangarh Fort has been excavated over decades, revealing metal, stone, and clay artifacts from various eras. The fort's boundary contains ancient bricks and archaeological evidence from dynasties such as the Pala and Sena. These artifacts underscore the site's importance as a cultural and historical repository. However, encroachments within its protected boundaries are compromising its integrity.

6. Lyndel V. Prott and Patrick J. O'Keefe, 'Cultural Heritage or Cultural Property?', *International Journal of Cultural Property* 1, 1992, pp. 307, 309

The Extent of Encroachment

A survey conducted by the Department of Archaeology revealed:

- **Structures Built:** At least 987 houses and structures have been illegally constructed within the fort boundaries.
- **Historical Materials Used:** 76 of these houses were built using ancient bricks and artifacts dating back to the Pala and Sena periods.
- **Types of Structures:** The buildings include pucca (concrete), semi-pucca, and mud houses, with several being two-story buildings.

Legal Actions and Challenges

In 2010, Human Rights and Peace for Bangladesh filed a writ petition against these illegal constructions. The High Court responded with an order to halt all unauthorized construction within the protected area.

- **Lack of Implementation:** Despite the court's directive, encroachments continued unabated. Law enforcement agencies and the Department of Archaeology have struggled to enforce the ruling.
- **Land Acquisition Delay:** The High Court recommended the immediate acquisition of land within the fort city, but the process remains incomplete due to bureaucratic delays and lack of funding.

Community Resistance

Many residents claim ancestral ownership of the land and resist eviction. Examples include:

- **Nasir Uddin's Family:** Residents of Mahasthan Dakshinpara village argue that the government has failed to acquire the land despite court orders.
- **Mosharraf Hossain:** After receiving a stop-work notice from the Department of Archaeology, he approached the High Court, further delaying enforcement. Residents cite family needs and social obligations, such as housing for children, as reasons for constructing within the fort boundaries.

Administrative Response

Bogura Police Superintendent Ali Ashraf Bhuyan has stated that legal action will be taken against those disobeying the High Court order. Meanwhile, Hannan Mia, Director General of the Department of Archaeology, emphasized that proposals for land acquisition have been sent to the ministry, with assurances of prioritization. However, no significant progress has been made.

Impact on Heritage Preservation

The ongoing encroachments pose severe risks to the preservation of Mahasthangarh Fort:

1. **Loss of Archaeological Evidence:** The use of ancient bricks and artifacts in construction has resulted in irreversible damage to historical resources.
2. **Compromised Authenticity:** The unauthorized buildings alter the landscape, undermining the site's authenticity and potential for future research.
3. **Neglect of Court Orders:** The failure to implement High Court directives reflects poorly on the country's commitment to heritage conservation.

Recommendations for Action

1. **Enforcement of Legal Measures:** Strengthen enforcement of the Antiquities Conservation Act and ensure adherence to High Court rulings.
2. **Land Acquisition and Resettlement:** Expedite the acquisition of land within the fort boundaries and provide adequate resettlement options for affected families.
3. **Public Awareness Campaigns:** Educate locals about the significance of Mahasthangarh Fort and the need to preserve it for future generations.
4. **Community Involvement:** Collaborate with local residents to develop mutually beneficial solutions, such as alternative housing or economic incentives.
5. **Monitoring Mechanism:** Establish a dedicated task force to monitor and prevent further encroachments.

The case of Mahasthangarh Fort exemplifies the challenges of balancing heritage preservation with community needs. While the High Court's orders provide a clear legal framework, effective implementation requires collaboration between government agencies, law enforcement, and local residents. Safeguarding this archaeological treasure is not just a national responsibility but a global imperative to protect South Asia's cultural heritage.

Analysis of Legal Conflicts

Lack of Coordination between Legal Frameworks

The Antiquities Act and Civil Law operate independently of one another, with little to no mechanisms for resolving conflicts that arise when both sets of laws apply to the same situation. This lack of coordination creates a legal grey area where heritage preservation efforts are hindered by civil law protections.⁷ The lack of coordination between legal frameworks poses a significant challenge to effective governance, particularly in areas where multiple laws intersect, such as heritage conservation, urban development, and environmental protection. Overlapping jurisdictions, inconsistent enforcement, legal ambiguities, and delayed policy implementation create confusion and inefficiencies, often leading to the neglect of critical issues.

7. K. Anwarul, *The Cultural Heritage of Bangladesh*, Karubak Publication, 2023, pp. 65-70

For instance, in Bangladesh, the conflict between the Antiquities Act 1968, urban development laws, and environmental regulations has severely impacted the preservation of heritage sites like Lalbagh Fort and Mahasthangarh. Despite High Court directives, unregulated construction and land encroachments persist due to jurisdictional disputes and bureaucratic delays. This lack of coordination not only accelerates cultural and environmental degradation but also undermines public trust and results in economic losses. Addressing this issue requires integrated legal frameworks, clear guidelines, inter-agency collaboration, and strict monitoring to ensure the alignment of policies and their effective implementation.

Judicial Interpretation

The judiciary in Bangladesh plays a critical role in balancing the conflicting interests of public heritage preservation and individual property rights. However, courts have often struggled to reconcile these interests due to poorly defined legal frameworks and the lack of comprehensive guidelines. In many cases, courts tend to favor civil law claims, particularly when ownership rights are well-established, which places heritage conservation efforts at a distinct disadvantage.⁸

One significant challenge lies in the interpretation of the Antiquities Act and its application in cases where private ownership intersects with the public interest. The ambiguity within the law often results in judicial decisions that prioritize individual rights over the protection of cultural heritage. For example, the absence of clearly defined buffer zones around heritage sites has led to illegal constructions that directly threaten the archaeological integrity of these sites. Without precise legal provisions or enforcement mechanisms, property owners exploit these ambiguities to continue building structures that violate heritage conservation guidelines.

Furthermore, the lack of specialized training for judges and legal practitioners in heritage laws exacerbates the problem. Many judicial decisions fail to consider the long-term consequences of allowing encroachments or unauthorized developments within or near protected sites. This issue is further compounded by delays in legal proceedings, enabling individuals to exploit the system and continue construction activities while cases remain unresolved.

An example of this challenge is evident in the ongoing disputes around iconic heritage sites like Lalbagh Fort and Mahasthangarh. Despite clear directives from the High Court to halt illegal constructions and vacate encroached areas, enforcement has been weak, and legal loopholes have allowed property owners to challenge the rulings in appellate courts. This not only delays action but also weakens public confidence in the legal system's ability to protect the nation's cultural heritage.

8. Makoto Hagino, 'The Legal Concept of 'Heritage' in the World Heritage Convention: The Case of Yakushima, Island', *Journal of Marine and Island Cultures* 5, 2016, pp. 11-13

To address these issues, the judiciary must adopt a more proactive approach to heritage preservation. Developing a specialized legal framework that clearly outlines the roles and responsibilities of property owners, government agencies, and the judiciary is essential.⁹ Additionally, capacity-building initiatives for judges and lawyers on heritage preservation laws can ensure that judicial decisions are informed and aligned with global best practices in heritage conservation. Without these steps, the judiciary's efforts to protect Bangladesh's rich cultural legacy will continue to be hindered by ambiguities and inefficiencies in the legal system.

Recommendations for a Harmonized Legal Framework

To address the challenges arising from conflicting legal frameworks, such as those between the Antiquities Act and Civil Law in Bangladesh, a harmonized approach is essential to ensure effective governance and the protection of cultural heritage. The following recommendations can contribute to achieving this balance:

Amendment of the Antiquities Act

The Antiquities Act should be updated to incorporate clear provisions for compensating private landowners and guidelines for acquiring land for preservation purposes. This will help reduce conflicts and provide legal clarity for stakeholders.

Establishment of a Mediation Mechanism

A dedicated mediation body should be introduced to resolve disputes between property owners and the government. This body could facilitate negotiations, ensuring that both heritage preservation goals and individual rights are respected.

Integrated Legal Framework: Develop a unified legal framework that synchronizes the Antiquities Act with urban development laws, environmental regulations, and civil property rights. This integration will eliminate jurisdictional overlaps and streamline decision-making processes.

Strengthening Enforcement Mechanism: Empower relevant authorities with clear enforcement protocols to implement court directives effectively. This includes the demolition of illegal structures, acquisition of disputed land, and penalties for non-compliance with preservation laws.

Awareness Campaigns and Public Education: Conduct nationwide awareness programs to educate citizens about their responsibilities under the Antiquities Act and the importance of heritage preservation. Engaging communities can foster cooperation and reduce resistance to legal measures.

Land Acquisition Policy: Expedite the process of land acquisition for heritage sites by establishing dedicated funds and simplifying administrative procedures. Ensure fair compensation to affected individuals to minimize disputes.

9. Prott and O'Keefe, *Cultural Heritage or Cultural Property?*, p. 309

Collaboration across Agencies: Promote inter-agency collaboration among the Department of Archaeology, local governments, urban planning bodies, and law enforcement agencies. Joint task forces can ensure consistent enforcement and better resource management.

Digital Mapping and Documentation: Use modern technology, such as GIS mapping and digital documentation, to identify and monitor heritage sites. This will help demarcate protected areas clearly and prevent encroachments.

Judicial Capacity Building: Provide specialized training for judges and legal practitioners on heritage preservation laws to ensure informed judicial decisions. Courts should prioritize cases involving national heritage and adopt strict timelines for resolution.

Monitoring and Reporting Systems: Establish monitoring mechanisms to track the implementation of preservation laws and report progress. Transparent reporting can hold stakeholders accountable and ensure timely action.

These recommendations aim to bridge the gaps between conflicting legal frameworks, ensuring a balanced approach that respects both heritage conservation needs and individual rights. A harmonized legal structure will not only protect cultural assets but also enhance governance and public trust.

Conclusion

The legal dilemmas arising from the interaction between the Antiquities Act and Civil Law in Bangladesh are complex, but not insurmountable. By amending the Antiquities Act, fostering better coordination between legal frameworks, and promoting public awareness, it is possible to create a legal environment that both respects private property rights and effectively preserves Bangladesh's rich cultural heritage. The lack of coordination between legal frameworks in Bangladesh poses a significant challenge to the preservation of its rich cultural heritage. Conflicts between the Antiquities Act and other laws, such as civil property regulations, highlight the urgent need for a harmonized approach to legal governance. By modernizing the Antiquities Act, fostering inter-agency collaboration, and incorporating public engagement, it is possible to create a legal framework that balances heritage conservation with the rights of individuals. A unified effort among government agencies, legal authorities, and local communities is essential to protect Bangladesh's invaluable archaeological sites and ensure their legacy for future generations.