

LEGAL ISSUES IN OWNERSHIP AND PRESERVATION OF CULTURAL HERITAGE: A CASE STUDY ON TAJ MAHAL

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1. ABSTRACT

The Taj Mahal is one of the UNESCO World Heritage sites that is legally protected under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (AMASR Act), and is under the state custodianship. But the ownership of the Taj Mahal has been in conflict between the Archaeological Survey of India (ASI) and the Uttar Pradesh Waqf Board, and the issue was contested in the courts. The UP Waqf Board claims that the monument is a waqf property (Islamic religious endowment), but the courts have strongly emphasized and held that a monument of national importance, without having provided clear and credible evidence, cannot be handed over to any religious or private entity. This is to stress that the Taj Mahal belongs to the nation and not to any private or religious entity.

Along with the ownership issues, preservation issues, including air pollution, industrial emissions, and climate impacts, surrounding Taj Mahal led to the landmark public interest case of MC Mehta vs UOI (Taj Trapezium case), which addressed industrial pollution affecting the monument, leading to strict regulatory controls around the monument and the creation of the Taj Mahal Trapezium zone (TTZ).

This Research paper analyzes the legal conflicts surrounding ownership and preservation of cultural heritage in India using the Taj Mahal as a case study. This synopsis hypothesizes that there is a thin evolving line between religious property claims and the state's heritage preservation of the Taj Mahal under property and constitutional law. It formulates research questions on ownership disputes, statutory protection, and judicial-environmental interventions. The research adopts a doctrinal and qualitative methodology, with its sources primarily from articles and journals available online.

Keywords – Taj Mahal, Waqf Board, TTZ, AMASR Act, ASI, NMA.

2. INTRODUCTION

The Taj Mahal is recognized as India's most iconic symbol of cultural heritage and architectural brilliance. The monument was built in the 17th century by the Mughal emperor Shah Jahan as a mausoleum cenotaph for his wife Mumtaz Mahal. It is also recognized as a World Heritage Site by UNESCO and a monument of national importance under the AMASR Act, 1958³². The monument is currently managed by the Archaeological Survey of India (ASI). Despite its clear legal status as a centrally protected

monument, the Taj Mahal has become subject to the ownership disputes and preservation challenges that raise significant questions in property law and environmental law.

The issue primarily emerged in 1998 when one, Irfan Bedar, a businessman from Firozabad, approached the UP Sunni Waqf board and petitioned to declare the Taj Mahal as waqf property or properties that are donated for religious and charitable purposes and held in trust under Islamic law. The UP Sunni waqf board sought to register the Taj Mahal as waqf property

³² Section 4 of the AMASR Act 1958. (Act 24 of 1958).

and issued a notice to the ASI about the same. This claim was challenged by the ASI, which questioned the custodianship under centrally protected monuments and raised questions about whether religious endowment laws can override national heritage protection statutes.³³

Simultaneously, preservation issues such as harmful pollutants and emissions released from harmful industries and foundries engaged in coal and coke, oil refineries, brick kilns, and climate impacts that have damaged the aesthetic beauty of the monument. This led to a landmark environmental case. MC Mehta, a prominent public interest litigator, filed a PIL before the Supreme Court of India in 1984, highlighting the adverse effects of pollutants released by such industries and foundries surrounding the Taj Mahal, and sought Judicial intervention to protect it from further damage. As a result, this landmark case led to the creation of the Taj Mahal Trapezium Zone (TTZ) of 10,400 sq.km. and directed 292 industries to relocate or comply with the environmental rules as laid out in this case.³⁴

This Research paper particularly looks into the legal conflicts surrounding ownership and preservation of cultural heritage in India, using the Taj Mahal as a case study.

3. HYPOTHESIS

The Taj Mahal's legal ownership status must be understood primarily as a national monument under state custodianship, taking precedence over private or religious ownership claims, unless there is clear and reliable evidence to believe that it belongs to a private or religious entity. On the other hand, the environmental pollutants released by the industries and foundries in the TTZ have resulted in marble decaying and discoloration of the monument.

4.1 The ownership dispute between ASI and the UP Waqf Board

Irfan Bedar's claim was subjected to religious purpose and use of the Taj Mahal for the same, which has tombs of both Shah Jahan and Mumtaz Mahal. He contended that since the structure functioned as a mausoleum, it fell under the jurisdiction of Islamic trusteeship and should be managed accordingly.³⁵ He also claimed to acquire the position of *Mutawalli* (caretaker) of the Taj Mahal in this matter. The Uttar Pradesh Sunni Waqf Board initially did not regard the appeal made by Irfan Bedar, and as a result, he filed a PIL relating to a writ petition in the Allahabad High Court, requesting to register the Taj Mahal as waqf property and appoint him as the Mutawalli³⁶.

The court suggested that the Waqf board treat the matter with great seriousness. Upon this, the UP waqf board claimed that the Taj Mahal was a waqf property declared by Shah Jahan for religious and charitable purposes and insisted it should be registered under Waqf and managed accordingly. The Waqf board asserted that the monument falls under the definition of Islamic religious sentiment and should be excluded from the ASI's control.

The UP waqf board defended this under sections 2 and 40 of the Government of India's Wakf Act, 1955. Section 2 of the act says that the act would apply to all waqfs, whether created before or after this act.³⁷ Section 40 of this act empowers the board to decide if a property is a waqf property.³⁸ Also, section 40(2) says such a decision shall, unless revoked or modified by the tribunal to be constituted by the state government, be final.³⁹

In 2005, the UP Waqf board formally registered the Taj Mahal as waqf property. This decision was immediately challenged by the ASI, which stated that the Taj Mahal had always been under the control of the central government and was officially recognized as a national monument.⁴⁰ In support of this stand, the ASI submitted to the

³³ Ajuni Bedi, "who owns the Taj Mahal? | Inside the Waqf Board's controversy", *LawChakra* (blog), April 4, 2025.

³⁴ Edwin Shibu, "The Taj Trapezium Case (MC Mehta V. Union of India & Ors)", *Naya Legal*.

³⁵ Supra note 2.

³⁶ V. Venkatesan, "A claim to the Taj", *Frontline*.

³⁷ Section 2 of The Wakf Act, 1954 (Act No. 29 of 1954).

³⁸ Section 40 of The Wakf Act, 1954 (Act No. 29 of 1954).

³⁹ Section 40(2) of The Wakf Act, 1954 (Act No. 29 of 1954).

⁴⁰ Supra note 2

Waqf board a copy of the notification issued by the British Government in 1920 under Section 3(1) of the Ancient Monuments Preservation Act, 1904, which clearly established that the ownership of the Taj Mahal was vested in the Government.⁴¹

The ASI reiterated that the right to manage centrally protected monuments and places of national importance is vested in the Government of India, and the waqf board had no power to interfere in the matter. Therefore, as a result, whatever the grievance of the ASI, it had to approach first and challenge the waqf board's order. However, the board sought to pre-empt any move to bring the controversy before the Supreme Court.

The case then escalated to the Supreme Court of India, which asked the waqf board to provide credible evidence proving that Shah Jahan himself had designated the Taj Mahal as waqf property during his lifetime. The ASI also held that the Taj Mahal could not be registered under the Government of India's Act, 1995, as there was no Waqf deed signed by Shah Jahan to establish this claim, and the UP Waqf Board failed in this matter to produce the original evidence signed by Shah Jahan to prove the waqf declaration⁴².

During the proceedings, the chief justice of India, Deepak Misra, elucidated that the Taj Mahal was not given directly to the Waqf board and was in possession of the East India Company for over 250 years, and then went to the central government.⁴³ The waqf board admitted that they lacked original documents but argued that "continuous religious use" of the structure made it eligible to be classified as Waqf property. They claim that since the site had been used for ages, for purposes like offering prayers and housing Muslim graves, it should be governed by the Waqf Board. But eventually, facing mounting pressure and lacking any historical documentation, the waqf board withdrew its

ownership claim⁴⁴. They clarified that while they believed that Taj Mahal belonged to Allah, their primary intention was to gain administrative control and not ownership in the traditional sense.⁴⁵

However, the ASI opposed even a limited request, reminding the Supreme Court that recognizing any form of religious control over a National Heritage site could open floodgates for similar claims over other monuments such as the Red Fort, Humayun's tomb, or Fatehpur Sikri.⁴⁶

Thus, the Supreme Court responded to this in the Tribune on who owns the Taj Mahal. On 17th April 2018, the Supreme Court termed the Waqf Board's claim as problematic and dismissed the petition.⁴⁷ The Supreme Court emphasized that religious entities must provide clear, verifiable evidence before claiming ownership of the national monuments, and the Court upheld that the Taj Mahal remains under the Union Government's custody through the ASI and cannot be transferred to any religious board.

4.2 The Preservation Issues

The Taj Mahal, which is known as one of the seven wonders of the world, has been a symbol of rich heritage and culture for over 500 years. Built using glossy white marbles in the Mughal dynasty's style, the Taj Mahal fascinates tourists from all over the world and makes it the most visited tourist place in India. Unfortunately, due to the growth of industries between the 19th and 21st centuries, the pollutants and the harmful waste released by the industries and foundries have resulted in discoloration of the white marble into yellowish and decaying due to acid rain.

Years before Sir MC Mehta filed the PIL, the Air (prevention and control of pollution) Act, 1981, gave authority to the state pollution control boards to declare "air pollution control areas"⁴⁸, set emission standards, and inspect factories⁴⁹.

⁴¹ Section 3(1) of The Ancient Monuments Preservation Act, 1904 (Act No. 7 of 1904)

⁴² Supra note 2.

⁴³ "Is Taj Mahal owned by the Waqf Board?", *The Times of India*, 2025.

⁴⁴ Supra note 2

⁴⁵ "Taj Mahal owned by Almighty, but...: What Sunni Waf Board Said in court today", *NDTV*, 2018

⁴⁶ Satya Prakash, "Who owns Taj Mahal? SC terms Sunni Waqf board's claim as problematic", *The Tribune*, 2018

⁴⁷ Supra note 15

⁴⁸ Section 19 of The Air (prevention and control of pollution) Act, 1981 (Act No. 14 of 1981)

⁴⁹ Section 17, 18, 24 and 51 of The Air (prevention and control of pollution) Act, 1981 (Act No. 14 of 1981)

Despite having this legal tool, the authorities in Uttar Pradesh failed to restrict industries such as oil refineries, foundries, brick kilns, and others, which used heavy coal and coke, particularly the Mathura refineries, that led to such pollution and environmental degradation affecting the Taj Mahal.

Public interest litigator MC Mehta, also an environmental activist, noticed that despite having such laws and acts, the concerned authorities failed to implement the same and obey the same. He stated that the Taj Mahal is suffering from “Marble cancer” and thus filed an PIL.⁵⁰ The PIL filed by MC Mehta in 1984 alleged that state and statutory authorities failed their duty to protect the Taj Mahal from industrial pollution. He relied on the scientific basis of the Varadharajan Committee, the Central Board for the Prevention and Control of Water Pollution report, and the NEERI reports, which confirmed that the industrial emissions were causing sulfation and marble discoloration.⁵¹

The Supreme Court, in response to this matter, created a special area stretching all across Agra called the Taj Mahal Trapezium zone (TTZ). The Taj Mahal Trapezium Zone is a 10,400 square kilometer area around the Taj Mahal, defined to implement strict pollution control measures against the major threats to the monument that include air pollution from the industry, especially sulfur dioxide and suspended particulates such as industrial coal and coke usage, causing sulphation and marble discoloration, vehicle emissions, and construction activities within TTZ.⁵²

The Supreme Court issued a judgment on a ban on the use of coal and coke in the specified industry within the TTZ. It is directed to shift 292 Industries to CNG or clean fuels, failing which they must close down. The Supreme Court implied the application of the precautionary

Principle, the polluter pays principle, and sustainable development⁵³ is linked to:

Article 21, which includes the right to clear air and water,⁵⁴

Article 47 – state’s duty in improving the public health as one of its primary duties,⁵⁵

Article 48A – to protect and improve the environment, and⁵⁶

Article 51(G) – duty of every citizen to protect and improve the environment, of the Constitution.⁵⁷

It was also observed by the court, in both ownership and preservation issues, that the AMASR Act is the primary legislation code in the Protection of Cultural Heritage monuments in India. The act includes the following provision and mandates the following duty:

- Section 20: declares certain monuments as “centrally protected monuments” under the jurisdiction of the Archaeological Survey of India (ASI)⁵⁸
- Section 21: places the duty of conservation and preservation of centrally protected monuments on the central government.⁵⁹
- [2010 amendments: established the national monument authority (NMA) to regulate activities around protected monuments and enforce stricter conservation by-laws.
- Role of ASI and NMA: The Archeological Survey of India is responsible for conservation, preservation, and management of centrally protected monuments like the Taj Mahal, whereas the National Monument Authority regulates activities such as construction, extraction, and industrial operation within the protected zone TTZ to prevent damage to monuments]⁶⁰

⁵⁰ Prof. Mohammed Zaheeruddin, “The role of the Supreme court of India in the preservation of the Taj Mahal: A heritage monument in India”, *Architecture Image Studio*, 2025, vol.6, page - 791

⁵¹ Supra note 3

⁵² Supreme court of India. M.C. Mehta v. Union of India & Ors., (1997) 2 SCC 353, (December 30, 1996)

⁵³ Supra note 3

⁵⁴ Constitution of India, art.21

⁵⁵ Constitution of India, art.47

⁵⁶ Constitution of India, art. 48A

⁵⁷ Constitution of India, art.51(G)

⁵⁸ Section 20 of the AMASR Act 1958. (Act 24 of 1958).

⁵⁹ Section 21 of the AMASR Act 1958. (Act 24 of 1958).

⁶⁰ The AMASR (Amendment and validation) Act, 2010, Act No. 10 of 2010

Under this framework, the Taj Mahal is said to be classified as a centrally protected monument, and the ASI holds custodial authority over it. Alongside the ASI and NMA has the duty to protect and preserve the monuments of national importance. The ASI also has the power to create bylaws for implementing the same.

As a result of such orders, the Supreme Court issued further orders for the closure of foundries and factories that did not comply with Judicial precedent. Certain industries were relocated or closed in Agra that fell under the TTZ. The case remains a leading precedent in Indian environmental law and the protection of cultural heritage.

4.3 Findings and suggestions

It is found by this research that the Taj Mahal is legally protected under the AMASR Act, 1958, and the ASI has the custodial authority as a centrally protected monument. The claims made by the UP Waqf Board failed due to a failure in producing the original evidence and the waqf deed signed by Shah Jahan to declare the Taj Mahal as waqf property. Even though the monument was being used for prayers on Friday under the religious tolerance by the ASI, it alone cannot be termed as a religious property. Thus, the court emphasized that national monuments cannot be handed over to private or religious entities. The court has balanced religious claims and state-based heritage preservation, prioritizing national heritage protection. Also, on the other hand, the creation of TTZ was necessary in preserving and protecting the monument from any environmental degradation.

Suggestions include expansion of the TTZ regulatory framework for stricter vehicle emission norms, or to shift to EVs as the EV world takes a huge stance and market lead. Educate the public about the importance of preserving the monuments that are rich in cultural heritage. The NMA should conduct periodical audits for the upkeep of the monument. The AMASR Act must be amended to bar religious boards from claiming ownership of centrally protected

monuments unless clear, conclusive evidence is provided.

5. CONCLUSION

The case study of Taj Mahal about its ownership and preservation issue highlighted the legal conflicts and challenges in managing and maintaining the monument, which is not only one of the seven wonders of the world, but also a monument of national importance and has a rich cultural heritage.

As stressed by the Supreme Court of India, the monuments of national importance must prevail over religious and private ownership claims, unless there is credible evidence. Thus, the Taj Mahal should be seen primarily as a national asset under the custodianship of the NMA and the ASI's care. At the same time, the MC Mehta v. Union of India case illustrates how environmental law and judicial interventions, by considering the constitutional frameworks, can protect such monuments from damages caused by environmental degradation surrounding them.

Alongside, the legal framework needs to keep evolving to balance property rights, environmental issues, and the protection of the cultural heritage by preventing misuse of legal actions for political or religious purposes.

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