

Legal Frameworks for Heritage Protection in Nepal: Review from Legal Pluralism Perspective

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Abstract

Nepal's monuments and archaeological sites are crucial cultural assets representing its historical legacy and national identity. However, their protection faces significant challenges due to gaps in the legal framework, weak enforcement, and minimal community participation. This study critically analyzes Nepal's constitutional provisions, legislations, international legal obligations, and landmark judicial precedents set in the relevant case laws to identify shortcomings in the current approach to heritage protection. This paper is guided by theoretical perspective of legal pluralism. The research paradigm is interpretivism and the study uses qualitative research design with a hermeneutics textual analysis method for the review of the existing policies, legal frameworks and judicial trends to assess the adequacy of existing laws. Major issues identified include insufficient legal provisions for local community involvement, inadequate disaster resilience strategies, and limited collaborations between public and private sectors. The study recommends strengthening the legal framework by introducing the new comprehensive legislation on monumental and archeological heritage protection. Further the paper suggests to amend other relevant acts to promote community engagement through workshops, financial incentives, and training on heritage value, and fostering public-private partnerships for funding and technical support. In conclusion, protecting Nepal's heritage sites requires a collaborative effort involving the government, local communities, and international partners to ensure sustainable management and effective implementation of legal provisions based on legal pluralism.

Keywords: heritage, law, legal pluralism, archaeology, monuments

Introduction

Nepal's monuments and archaeological heritage sites are invaluable cultural assets that reflect its rich history and identity. This study examines the existing policy and legal

frameworks of archeological and monumental heritage protection drawing on the theoretical perspectives of legal pluralism. Nepali legal system is a blending of various regulatory norms that comprises state laws, customary practices and religious values of the particular communities within which the heritage sites locate. This research paper examines whether existing laws on heritage protection are sufficient for their long-term preservation. It also explores how different legal systems interact in managing these heritage sites. The research is mainly focused in the analysis of prevailing constitutional provisions, major existent laws and landmark judgements rendered by the Supreme Court (SC) of Nepal in relevant case laws which collectively provides a regulatory framework for heritage governance.

This study uses the concept of legal pluralism, as explained by Sally Engle Merry and Franz von Benda-Beckmann, to analyze how laws and judicial trends shape Nepal's efforts in protection of heritage sites. The paper argues that protection and management of heritages cannot rely solely on state-imposed laws. Instead, effective protection requires active local participation and the integration of traditional customs, religious beliefs, and customary practices. To ensure sustainable management, it is essential to foster a sense of ownership and national pride within local communities, encouraging them to take an active role in protecting and maintaining these cultural sites. Key terms of this article are defined hereinafter to underscore the central argument of this paper.

Heritage is a broad and evolving concept that includes both tangible and intangible elements shaped by human activities and their interaction with nature (Perez et al., 2010). Initially, heritage was mainly associated with artistic works, buildings, and archaeological remains, often referred to as historical, archeological and artistic heritage. Over time, its meaning expanded to include objects, cultural practices, and natural environments. Earlier, the term was commonly used to describe inheritance, either what individuals receive from their ancestors or pass down to future generations (Lowenthal, 2005). Over time, the understanding of heritage has changed across different societies and historical periods, making it a dynamic and sometimes contested concept (Lowenthal, 2005; Zazu, 2011). In this article, the term 'heritage' is used to discuss particularly the monuments and archeological sites in Nepal.

Monuments refer to structures, buildings, or sites of historical, cultural, or artistic significance that venerate notable events or figures. They serve as tangible representations of history and identity, shaping socio-cultural heritage (Ahmad, 2006, p. 16). The Convention Concerning the Protection of the World Cultural and Natural Heritage (1972) adopted by United Nations Educational, Scientific and Cultural Organization, (hereinafter referred to as UNESCO) defines monuments as architectural works, inscriptions, cave dwellings, or elements with universal historical value (art. 1).

Archaeological sites, on the other hand, are locations with material remains of past human activity, including settlements, artifacts, and structures (Renfrew & Bahn, 2018, p. 78). Trigger (2006) highlights that archaeological sites provide insights into ancient societies, enabling the study of cultural evolution (p. 132). Nepal's archaeological sites, such as Lumbini, Pashupatinath, Swayambhu *Caitya* offer invaluable historical data on ancient regime, art, religion, and social practices. Convention for the Safeguarding of the Intangible Cultural Heritage (2003) defines intangible cultural heritage as intangible cultural expressions, traditions, and artifacts inherited from past generations, shaping collective identity and historical continuity (art. 2, para. 1).

Despite the absence of unanimously accepted definition of the term "law", it is regarded by positivist thinkers as a body of rules recognized and enforced by the State to administer justice and regulate human conduct (Salmond, 1924, p. 62). Hart (1961) also defines law as the combination of primary and secondary rules established by a governing authority to regulate conduct within a society that provides a framework for order, justice, and rights. From a sociological perspective, law is an instrument of social control and social engineering that evolves to meet societal needs (Pound, 1910, p. 35). Law is one of the most important instruments for the protection of cultural heritages because the law defines public policies, sets procedures and provides for implementation mechanism. In Nepal, legal framework for archaeological and monumental heritage protection is primarily governed by the Ancient Monument Preservation Act (1956), (hereinafter referred as AMPA (1956)) which seeks to regulate, conserve, and protect historical sites and artifacts. There are other relevant laws and judicial precedents as set by the SC which together form a legal regime governing the matters relating to protection of heritage sites.

Similarly, legal pluralism is notion of coexistence of overlapping legal frameworks within a given society. It highlights the role of cultural norms and non-state legal orders in the functioning of formal legal institutions (Merry, 1988, p. 878), which is evident in Nepali context where communities not only take part in the rituals associated with temples, monasteries and such heritages but also they have their role in protection of those sites. Moreover, scholarly distinction between "weak" and "strong" legal pluralism (Griffiths, 1986, p. 3) is relevant to Nepali scenario, where strong legal pluralism is prevailing due to autonomy of community based institutions such as *guthis* in protection and promotion of such heritages. It is important to perceive the interaction of local legal systems with formal State structures to analyze how customary norms of the communities ensure local participation in the protection of heritages (Benda-Beckmann, 2002, p. 40).

These terms are pertinent to highlight the interplay between State laws and customary practices of heritage sites protection and operationalizing these terms, the article aims to bridge significant gaps in the scholarship of monuments and archeological legal regulation in Nepal.

Literature Review

This part presents a comprehensive chronological review of existing scholarship on monuments and archeological legislations in Nepal. A thorough review is required to understand existing scholarship, identify research gap and unfold researcher's point of departure that differs from previous studies.

Conflicts among various stakeholders mainly the Department of Archaeology (DoA), local residents, tourism entrepreneurs, donor agencies and other governmental institutions in heritage conservation is observed by Chapagain (2008). Such complications resulted in enlisting the Kathmandu Valley World Heritage Sites in the “endangered list” in 2003 which was later been delisted after four years. Similarly, Shrestha (2012) also explores the legislation on conservation and management of Kathmandu Valley World Heritage Property (KVVHP). Authors conclude that Nepal needs to reevaluate the conservation policies counting on local cultural practices.

Likewise, Rajbanshi (2012) advocates for the revision of AMPA (1956). However, the article primarily presents author's perspective without a comprehensive analysis of legal provisions in relation to other relevant laws, and it offers limited references to support author's arguments.

In another study, Maharjan (2018) examines that parallel existence of traditional community-oriented and formal heritage conservation system and urge for their convergence. Besides, Adhikari & Dahal (2019) provide a descriptive legal information on preservation of heritages. Despite authors provide a list of legislations, the major part of their article is dedicated on introducing heritage sites listed in UNESCO World Heritage Site.

Similarly, Subedi & Shrestha (2023) examine the policies on conservation and management of cultural heritage in Kathmandu and seek the unified policies. Further, Rokka (2024) states that sustainable development of Nepal is affected by a lack of proper legal and policy framework for balancing infrastructure development and heritage conservation. Author stresses on comprehensive, proportionate, and flexible legal policy frameworks to achieve balance between infrastructure development and heritage preservation but do not elaborate in details what sorts of provisions would be comprehensive, proportionate and flexible.

The need for an indigenous system, traditional design, local skills rather than modern technology in conservation and management of cultural heritage is underscored in another paper (Subedi & Shrestha, 2024). However, authors reach to such conclusion examining merely the heritage protection within traditional *guthi* system rather than analyzing the broader monumental and archaeological law.

Although the above mentioned sources works contribute on analysis of conservation policies, they have not focused on overall cultural heritage legal framework with thorough analysis of landmark precedents set by the SC of Nepal. As judicial precedents set by the court of record are regarded as part of overall legal framework, without analysis of judicial trends on heritage protection, the policy analysis of overall legal framework remains incomplete. This is the research gap which author has identified and this study shall contribute to fulfill this gap in existing scholarship through the cultural-legal analysis of the constitutional provisions, legislations and landmark precedents established in various case laws on heritage protection.

Research Methodology

This study follows qualitative research design and the research paradigm is interpretivism. Research have used hermeneutical textual analysis method for the review of the existing policies, legislations, rules, and case laws in the study area of heritage protection in Nepal. The study is based on secondary source which are purposively sampled and collected from research based books, scholarly articles, dedicated websites of the concerned departments. Constitution, bare Acts and other legal texts are collected from the Law Book Management Committee under Government of Nepal, Ministry of Law, Justice and Parliamentary Affairs (GoNMoLJPA). Landmarks eleven case laws relating to heritage protection, cultural monuments and archeological matters are retrieved from the official website of the *Nepal Kanoon Patrika* (N.K.P.), the case law reporter published by the SC of Nepal. Unpublished cases in N.K.P is retrieved from the website of the SC of Nepal. The policy and legal texts in the study area are analyzed by using the theoretical perspective of legal pluralism.

Textual Analysis of Legal Frameworks on Heritage Protection in Nepal

Constitutional Provisions

The Constitution of Nepal (2015) in its preamble emphasizes protection and promotion of social and cultural solidarity, and unity in diversity by recognizing the multi-ethnic, multi-lingual, multi-religious, multi-cultural and diverse regional characteristics. It enshrines the right to freedom of religion, ensuring every religious denomination the right to operate and protect its religious sites and religious *Guthi* (trusts). But State can regulate the operation and protection of religious sites and trusts along with management of trust properties and lands by making the law (The Const. of Nepal, art. 26(2)). Every person and community shall have the right to participate in cultural life of their communities (art. 32(2)). Every Nepali community residing in Nepal shall have the right to preserve and promote its language, script, culture, cultural civilization and heritage (art. 32(3)).

Eliminating all forms of cultural discrimination, developing cultural values founded on national pride and recognizing cultural diversity are part of cultural objectives under directive principles of the State (art. 50(2)). Policies of the State under art. 51(c)(2) aims to carry out studies, research works, excavation and dissemination for the protection, promotion and development of ancient, archaeological and cultural heritages. Art. 51(c)(4) of the Constitution focuses on the development of arts, literature and music which form cultural heritages. Similarly, art. 51(l) aims to develop eco-friendly tourism industries as an important base of national economy by way of identification, protection, promotion and publicity of the ancient, cultural, religious, archaeological and natural heritages of Nepal.

Sites of archaeological importance and ancient monuments are enumerated in S.N. 34 of the list of federal power under Schedule-5 whereas, archaeology, ancient monuments and museums are also placed as matters of concurrent powers of federation, State and local level in S.N. 12 under Schedule-9 of the Constitution. Such overlap in constitutional powers over archaeological sites and monuments should be clarified unambiguously through the legislation. Clear rules are needed to define the roles of federal, State, and local governments to avoid confusion and ensure proper conservation and management acknowledging the local customary practices of conservation. The federal government should focus on excavation, exploration, and the conservation of nationally and internationally significant heritages, while state and local governments should empower communities, integrate traditional knowledge, preserve sites in their original form, train locals in site maintenance, and manage local museums.

While the constitutional provisions emphasize Nepal's commitment on preservation, promotion and sustainable management of archaeological sites and monuments with the participation of all three tiers of government, their effective implementation requires well-articulated and harmonized laws.

Major Legislation: Ancient Monument Preservation Act (1956)

This is key legislation to govern the matters of preservation of ancient monument and archeological objects in Nepal. Despite its name itself does not contain the term 'archaeology', AMPA (1956), entrusts the DoA primary responsibility for the exploration, excavation, conservation, and publication of ancient heritage, particularly historical, cultural, and archaeological objects of national and international importance (s. 3B-3D).

"Ancient Monument" is defined as temple, monument, house, abbey, cupola, monastery, stupa, vihar etc. which have their importance above One Hundred year, from the point of view of history, arts, science, architectonics or art of masonry, and this word shall also means the site of the monument as well as the human settlement or place, and remnant of ancient human settlement, relies of ancient monument, cave etc. having specific value from the national or international point of view irrespective of the fact that such settlements or

places are adjoining with each other or are separate in the same area (AMPA, 1956, s. 2(a)). Likewise, the s. 2(b) of the AMPA (1956) defines the term "Archaeological Object" means the object made and used by human being in pre-historical period or handwritten genealogy, handwritten manuscript, golden inscription, copper inscription, petrography, wooden inscription, *bhojapatra* (document written on the bark of brick tree), *tadapatra* (document written on the leaf or bark of *palmyra* tree), paper, coin, house where historical event has occurred or where historically special personality has resided and things such as stone, wood, soil, ivory, bone, glass, cloth, paper or metal used by such person or some important portion of the house in which attractively scribed things are used, scribed or inscribed idol, temple of god or goddess, Buddhist cenotaph statue, thankas, replica of animal, birds and any movable or immovable objects, which depict the history of any country, and objects as prescribed by Government of Nepal (GoN) by a Notification in the Nepal Gazette from time to time. The statute recognizes modern handicrafts not exceeding Hundred years of age as "curio" (s. 2(c)).

The Act provides for the declaration of Preserved Monument Area (PMA) under s. 3 of the Act by the GoN and after such declaration, construction, repair, alteration or reconstruction works of the house or building in the PMA done against the prior approved drawing can be stopped by the DoA issuing an order (AMPA, 1956, s. 3(8)). Based on ownership, GoN can classify the ancient monuments in public ancient monuments and private ancient monuments (s. 3A(1)), whereas, based on their significance, GoN may classify ancient monuments into four categories of international importance, national importance, provincial importance, and local importance (s. 3A(2)).

The conservation, maintenance, and renovation of privately owned ancient monuments inside protected areas must be carried out by the owner with prior approval from the DoA. For those outside protected areas, local level or owners must follow the DoA's directives. The *Guthi Sansthan* is responsible for monuments under its jurisdiction, but if it fails to act, the DoA may intervene directly or assign the task to others. Unauthorized actions or violations of directives may result in fines up to NPR One Hundred Thousand, imprisonment for up to six months, or both (AMPA, 1956, s. 3C).

In the federal structure, provisions have been added in AMPA (1956) in s. 3H for the protection of ancient monuments by the provincial and local governments. At the commencement of this provision, the GoN shall transfer the responsibility of protecting and managing ancient monuments of provincial significance to the provincial government and those of local significance to the local level (s. 3H(1)). The concerned provincial and local level must protect and manage the transferred ancient monuments in accordance with the standards set by the DoA (s. 3H(2)). For the purpose of protecting the transferred ancient monuments, the provincial or local government may declare them as protected monument areas as per s. 3 of the Act (s. 3H(3)).

The AMPA (1956) grants the government overriding powers over privately owned ancient monuments and archaeological objects, often prioritizing State control over individual property rights. The Act allows the government to purchase privately owned ancient monuments, land, or houses in monument areas if deemed necessary for protection (s. 4). Even if an owner voluntarily donates a monument, the government unilaterally registers it as public ancient monument, reinforcing its authority over heritage sites (s. 4(2)). Owners of preserved ancient monuments are obligated to enter into a deed of responsibility for conservation (s. 5). If they refuse, local authorities are instructed to enforce compliance, compelling both private owners and local representatives to follow state-mandated conservation measures. If a private owner damages or defaces an ancient monument or object, the DoA has the power to seize it after determining compensation fixed by the meeting of local gentlemen (s. 7). This provision allows the State to take control of private heritage with minimal negotiation. Except for those under private ownership, all newly found archaeological objects automatically fall under government custody (s. 17A). This prevents individuals from claiming ownership over artifacts discovered on their land, even though their land is inherited family property. The government ensures public access to historical, artistic, or religious sites, even if they are privately owned (s. 10). Any restrictions imposed by private owners may be penalized with a fine up to Five Hundred Rupees (s. 11).

AMPA(1956) strongly favors government control over heritage conservation, limiting the rights of private owners and their interests over individual property concerns. These sorts of provisions seem to be counterproductive from the perspective of legal pluralism as they undermine the local private sentiments and ownership attached to their property having significant archeological value. This kind of State-centric approach could lead to fear among private owners, possibly causing individuals to resort to hiding or destroying archaeological discoveries out of fear that the government might take their land or property. One of such case pointer example is the incident of shattering the *Lichchhavi*-era stone inscription found on March 30, 2023 during the excavation of an underground water tank in Futung, Tarkeshwar Municipality, in Kathmandu. A *Lichchhavi*-era inscription was unearthed but deliberately destroyed the next day. Following media reports, archaeologists and researchers inspected the site on April 1 and managed to recover some inscription fragments. With the intervention of the Department of Archaeology, the preserved fragments were relocated to the National Museum in Chhauni (National Archives, 2023). To prevent this sort of tendency, clear legal frameworks, public awareness, and incentives for conservation should be prioritized and private individuals as well as local communities should be regarded as the custodian of the monuments and archeological objects.

The penal provisions of the AMPA (1956) mainly provided in s. 12 outline fines and imprisonment for offenses related to the destruction, theft, defacement, and unauthorized use of ancient monuments and archaeological objects. The Act imposes penalties for damaging

or stealing protected monuments, with fines ranging from NPR Twenty-five Thousand to One Hundred Thousand and imprisonment of up to fifteen years for severe offenses (s. 12). Unauthorized use or harm to monuments carries a fine of up to NPR Twenty-five Thousand or five years of imprisonment. Similarly, tampering with archaeological objects results in fines from NPR Five Thousand to One Hundred Thousand or up to five years in prison. AMPA (1956) mandates the registration of archaeological objects over one hundred years old, with non-compliance leading to fines of NPR Five Hundred to Five Thousand, and potential confiscation by the DoA (s. 13). Violations related to unregistered transactions in ancient objects attract fines up to NPR Twenty-five Thousand or five years of imprisonment. Similarly, s. 16 of the Act addresses unauthorized archaeological excavation, requiring prior approval from the government. Excavating without permission results in a fine of up to NPR Twenty-five Thousand or five years in prison, while failure to notify the DoA carries a fine of up to NPR Fifteen Thousand or three years of imprisonment. The law allows authorities to inspect sites suspected of illegal excavation or trade in ancient objects. However, these penalties are outdated and insufficient to deter large-scale looting and destruction, highlighting the need for stricter enforcement and legal reforms to protect Nepal's cultural heritage effectively. The fines, ranging from as low as NPR Five hundred to a maximum of NPR One Hundred Thousand, do not reflect the actual value of archaeological objects or the severity of damage inflicted upon them.

Given the inadequacies in the AMPA (1956), which primarily focuses on tangible heritage and lacks clear provisions for the protection of intangible heritage, new legislation is necessary to address these gaps. Amatya (2011, p. 41-42) argues that heritage protection law must include both tangible and intangible heritage, ensure community participation, and introducing stricter penalties for vandalism and trafficking of heritage artifacts. Protecting monuments also means protecting their surrounding environment and cultural landscape (Amatya, 2011, p. 43-44). Cause of decay of monuments involve the organic activities of animals, birds, ants and insects. Similarly, it is decayed due to natural disasters, vandalism and other human activities like theft, unplanned development, war etc. (Dahal & Khatiwada, 2008 p. 295-301). Thus ancient monument heritage protection law has to address these concerns properly and new legislation must be brought in place by the Federal Parliament replacing the existing AMPA (1956).

The traditional public procurement system, which primarily focuses on low bidding, is also hindering the quality of work in the preservation and conservation of monuments and archaeological sites; therefore, a special procurement provision should be included in the new legislation to ensure high-quality standards in such projects. The communities' traditional customary practices of preservation should be accommodated in the new law from the perspective of ensuring legal pluralism. Strengthening ownership rules on privately inherited ancient property will preserve such objects in community participation. Likewise,

mechanism for providing incentives for newly found archeological objects help prevent destruction caused by fear of land seizure when archaeological objects are found.

Other Legal Instruments

Local Administration Act (1971)

Among other relevant laws, this statute grants the Chief District Officer (CDO) authority over heritage conservation. It mandates the CDO to maintain records of public heritage sites like water spouts, ponds, temples, monasteries, and mosques (s. 9(6)). If such monuments lack owners and face risk of collapse, the CDO must ensure their preservation through municipalities or the *Guthi* Corporation. The Act provides a strong legal foundation for local heritage management but relies on effective implementation.

Guthi Corporation Act (1976)

Guthi Corporation Act (1976) was enacted to manage and regulate *Guthis*, which traditionally finance religious and cultural activities in Nepal. It categorizes *Guthis* into public and private, ensuring their income is used for temple maintenance, rituals, and caretaker salaries (s.16 & s. 25). The Act also established *Guthi Sansthan*, a government body responsible for overseeing *Guthi* properties, resolving disputes, and implementing legal provisions. However, s. 25 allows *Guthi* land to be converted into private property upon payment, which has significantly contributed to the decline of the traditional *Guthi* system. Tandon (2019) claims that Nepal is the only nation that has the *Guthi* system with its main purpose of preservation and promotion of religious, cultural, social as well as economic services in the community along with the performance and organization of various festivals, *Jatras*, and establishment and management of various temples, monasteries etc. The ancient history of *Guthi* started with the *Lichchhavi* period in the form of "*gosthi*". *Guthi* Corporation Act (1976) primarily focuses on land and income management but lacks clear provisions for the conservation of tangible heritage, leading to challenges in preserving historical heritage sites.

Pashupati Area Development Trust Act (1987)

This Act was enacted to safeguard, maintain, and develop the Pashupatinath area, an ancient site of religious and cultural significance. The Act establishes the Pashupati Area Development Trust (PADT), which is responsible for the protection of temples, shrines, *muths*, rest houses, land, forests, riverbanks, and gardens, along with maintaining sanitation, drinking water, and preventing pollution (Preamble). The objectives of PADT emphasize the planned development and protection of religious and cultural heritage (s. 6). The statute provides for the functions of the Governing Council, including planned construction, maintenance, and repair of the area while ensuring a clean environment (s. 10). The law requires PADT to maintain water supply, sewage, and other public utilities, while also

restricting unauthorized construction, reconstruction, or alterations without prior approval (s. 14 & s. 17). While the Act aims to integrate heritage conservation with modern infrastructure needs, its formal mechanism may sometimes conflict with local customs and traditional *Guthi* management systems, raising concerns about its alignment with legal pluralism. For example, in the wake of 2015 earthquake, PADT has closed the traditional gate in front of the Batsaleshowri Temple connecting the traditional pilgrim route directly from Bagmati Aryaghat to the Pashupatinath Temple, which is against the traditional and customary values of devotees.

Lumbini Development Trust Act (1988)

This law was enacted to protect and develop Lumbini, a UNESCO World Heritage Site. The Act establishes the Lumbini Development Council (s. 8), which guides the executive committee in managing temples, monuments, monasteries, and infrastructure while addressing environmental concerns, though coordination issues persist among national and international agencies.

Kathmandu Valley Development Authority Act (1988)

This Act was enacted to regulate urban development and heritage conservation in the Kathmandu valley. It empowers the authority to implement projects for the protection of religious, cultural, and historical sites while ensuring environmental conservation (s. 6). According to s. 9 of the Act, authority is allowed to demolish the unauthorized constructions. The Act aims to balance urban expansion with heritage preservation. However, weak enforcement has made its implementation largely ineffective.

Municipal Development Act (1988)

This Act focuses on the conservation and management of heritage sites, particularly within the Kathmandu valley. It mandates that individuals must obtain permission from the Municipal Development Committee to access or use archaeological, historical, and religious sites, and prohibits unauthorized activities in these areas (s. 9(1)). It empowers the committee to prepare and implement plans for the preservation, development, and management of cultural and historical sites (s. 11) in accordance with the AMPA (1956).

Greater Janakpur Area Development Council Act (1998)

This law establishes the Greater Janakpur Area Development Council (GJADC) to manage and develop religious, historical, and archaeological sites within Janakpur and its *Panchakosi* circuit (s. 3 & s. 5). The Council is responsible for infrastructure development, site protection, and research on temples, shrines, and lakes (s. 5). It has the authority to regulate, control, or prohibit activities within the area through public notices (s. 13). Additionally, the Council can declare sites of religious and historical importance and order the demolition or removal of unauthorized constructions if necessary (s. 14 & s. 16).

Town Development Act (1998)

It empowers the Town Development Committee to regulate and manage urban planning. The Act grants the authority to control activities related to agricultural land, natural heritage, archaeological sites, and immovable property within town planning areas, requiring prior approval (s. 9). Also the law assigns the committee the responsibility to develop and implement projects for the conservation of religious, cultural, and historical heritage, ensuring compliance with Nepal's ancient monument laws (s. 11).

Local Government Operation Act (2017)

This legislation grants local bodies the authority to manage cultural and tourism areas. The s. 9, of the act provides for the declaration of cultural or tourism areas. The Act outlines the rights of rural municipalities and municipalities in s. 11 which mandates the preservation and promotion of language, culture, and fine arts (s. 11(2)(v)). Also the Act specifies the rights, duties, and responsibilities of ward committees, ensuring local-level governance in cultural and heritage conservation (s. 12).

Bylaw for the Construction, Renovation, and Conservation of Private Houses within the Entire Protected Monument Zone (2007)

The bylaw was enacted to regulate private house renovations within the seven Protected Monument Zones of the KVWHP, declared under AMPA (1956). Initially, the DoA prepared Directives for Conservation and Renovation (1991), which were later amended in 2007 into the current bylaw.

Integrated Management Plan/Framework for KVWHP (2007)

This policy document was a requirement for World Heritage listing since 1997. Its objective was to assure UNESCO that Nepal had the necessary legal framework and management systems for the long-term protection of heritage sites. KVWHP was placed on the List of World Heritage Sites in Danger, prompting the Government of Nepal to take action. As per the Operational Guidelines for the 1972 Convention (revised 2005, para. 14), the plan emphasized the involvement of local communities in the nomination process to ensure shared responsibility for heritage conservation.

Judicial Trends: Case Law Analysis

The major trend of judicial pronouncements by the SC of Nepal in landmark eleven cases relating to the heritage protection, cultural monuments and archeological objects are analyzed in this segment as follows:

In a recent case of *GoN v. Nirmal Kuikel et al.* (2025) decided on February 12, 2025, nine people, including Nirmal Kuikel, a former member-secretary of the PADT have been found guilty of corruption by the SC of Nepal. They were convicted for illegally allowing

the excavation of sand and soil from government land under the PADT area, which caused significant financial losses to the State. The SC reversed an earlier Special Court decision that had acquitted most of the accused. The division bench of Justices Kumar Regmi and Abdul Aziz Musalman sentenced Nirmal Kuikel and former Trust official Sushil Nahata to six years in prison with fines over NPR 8.3 million and NPR 9.1 million, respectively. Other officials, including local development officers and planning officers from the Kathmandu District Development Committee, were also sentenced to various terms ranging from six months to six years. Notably, contractor Bachhuram Dahal was fined over NPR 129 million, although he was not given a prison sentence.

From the lens of legal pluralism, this verdict by the Apex Court represents a positive development in reinforcing the primacy of formal legal accountability over informal political networks and patronage. While respecting the autonomy of religious and development bodies like the PADT, the SC by reversing the earlier Special Court decision, has rightly emphasized that public land and resources cannot be exploited under the guise of tradition, influence, or political and bureaucratic discretion. This decision can be seen as a step toward heritage protection by harmonizing legal pluralism with democratic accountability—where cultural or customary practices must align with anti-corruption principles.

Supreme Court rendered its directive order not to grant any approval for building designs that include basements or sub-basements in new buildings in the Hanuman Dhoka Preserved Cultural Heritage Buffer Zone, until an integrated standard is formulated or necessary amendments are made to the Hanuman Dhoka Protected Monument Conservation and Construction Guidelines (*Prakash Mani Sharma et al. v. OPMCM et al.*, 2020). This case signals the precedence of statutory regulation over private interests in heritage areas. It also reveals a gap in harmonizing local conservation practices with formal planning laws, pointing to a lack of integrated, context-sensitive regulatory standards. This is an issue legal pluralism aims to address.

Moreover, precedent is set that religious sites all across the country are invaluable assets and they must be preserved for future generations. This is also the principle of the intergenerational equity as enshrined in the constitution in the eye of the Supreme Court (*Baikuntha Das Vaishnav of Ratnasagar Muth v. Guthi Sansthan*, 2019). This case demonstrates how formal legal reasoning is increasingly accommodating indigenous and religious values embedded in *guthi* and temple traditions.

In a case of *Rato Kumari Development Service Committee v. OPMCM et al.* (2018), Supreme Court has highlighted the government's duty to preserve heritage sites and prevent their destruction, encroachment, or privatization. The court recognized that the government is not merely the owner but also the trustee of public heritage, and it must ensure the proper preservation of such sites. The court ruled that the state must prevent unauthorized

transactions, sales, or leasing of historical properties. This judicial pronouncement reflects a pluralistic legal understanding, where state responsibility aligns with community expectations and traditional custodianship models. The ruling reaffirms that heritage protection involves more than enforcing State property law and it also requires respecting community ties and customary claims to heritage protection.

Supreme Court has clearly interpreted the meaning of secularism as the role of State in protecting religion, religious heritage, and culture in context of Nepal in the case of *Tulasi Simkhada v. GoN, OPMCM et al.* (2017). Also in another case of *Charibahadur Gahatraj et al. v. OPMCM et al.* (2012), the court has interpreted the secularism and the role of State to preserve and manage the ancient religious sites. These cases establish that State has its constitutional and legal obligations to protect the religious heritage along with the communities.

Similarly, in a public interest litigation (PIL) case of, *Amita Gautam Poudel v. Office of the Prime Minister and Council of Ministers (OPMCM) et. al.* (2017), Supreme Court ruled that government has to ensure sustainable reconstruction of the ancient monuments of archeological importance in line with Nepal's legal and international commitments. It acknowledged the 2015 earthquake's impact on cultural heritage and stressed that the restoration of damaged monuments must maintain their original form using traditional methods. As traditional method of construction and original form of the heritage sites is given due recognition, SC has implemented the notion of legal pluralism in this case.

Supreme Court quashed the illegal decision of Kathmandu Metropolitan City (KMC) permitting a private company Sidewalkers Traders Pvt. Ltd. through an agreement to manage and collect fees at Hanuman Dhoka Durbar Square, a UNESCO World Heritage site, holding that KMC lacked the authority to enter into contracts allowing private entities to charge fees for access to public heritage sites. In the case *Deepak Bikram Mishra v. OPMCM et al.*, (2014), judiciary found that such agreement without competition even violates both the principles of fair competition and transparency in business practices. The Supreme Court rendered judgement that decisions affecting cultural and religious heritage must involve local communities and be transparent. This is one of the crucial decision in protecting the interests of local community with regards to ancient heritage, thus legal pluralism is recognized and upheld through this case law.

In a PIL case of *Prakash Mani Sharma et al. v. GoN, MoLD et al.* (2007) filed regarding unauthorized constructions around *Rani Pokhari*, a historic pond built by King Pratap Malla, surrounded by temples and statues of deities, Supreme Court affirmed that *Rani Pokhari* is a historical, religious, and cultural landmark that should be preserved. The government was directed to remove all encroachments and environmental pollutants from the area within three months. Earlier similar case was filed by challenging the construction

of the Central Regional Police Office nearby the *Rani Pokhari* (*Prakash Mani Sharma v. HMG Council of Ministers Secretariat et al.*, 1997). The petition raised concerns about the planned construction of a Central Regional Police Office near the pond, arguing that it could harm its cultural and historical value. However, the court noted that the area had long hosted various government offices, including the Bagmati Zonal Commissioner's Office and the Supreme Court in the past and found no substantial evidence that the police office would cause greater environmental damage than existing urban activities. However, the Supreme Court rendered a directive order in the name of Council of Ministers Secretariat for necessary action to formulate national policies ensuring uniformity in protecting religious, cultural, and historical heritage while monitoring Nepal's compliance with the 1972 World Heritage Convention and relevant national laws. From a legal pluralism perspective, the shift from the 1997 to the 2007 Rani Pokhari rulings reflect a gradual shift in SC's recognition from a state-centric approach to a more culturally responsive and community-sensitive model of heritage protection based on diverse cultural, historical, environmental normative values surrounding the heritage.

In a case of theft of ancient idol, defendants Hakucha Awale and Yosinca Maharjan were charged in a case pursuant to AMPA (1956), but there was no evidence proving that Krishna Gopal Maharjan also intended to smuggle or relocate the statue, as he only took a photo of it (*Krishna Gopal Maharjan v. HMG*, 1985). Supreme Court in this case established that just taking photos of the ancient monuments and archaeological sites does not amount to the crime of smuggling or theft. Thus the Court ruled that since there was no substantial evidence to prove that Krishna Gopal Maharjan committed the crime under s. 13(1) of the AMPA (1956), he was acquitted of the charges. From a legal pluralism perspective, the Court's ruling rightly acknowledges that public interaction with heritage, such as taking photos out of faith or reverence, should not be criminalized. This judgment respects diverse cultural practices and community relationships with sacred objects.

As can be seen from the above discussion, Nepali judiciary has played a proactive role in preserving heritage, ancient monuments, and public cultural sites by upholding transparency, ensuring legal compliance, encouraging local participation, and supporting traditional knowledge systems. It has safeguarded the autonomy of institutions like PADT and *Guthi Sansthan* while intervening against corruption and arbitrary government decisions to privatize or commercialize public heritage sites. Through its rulings, the court has been instrumental in enforcing laws, protecting public interests, and strengthening heritage protection efforts.

Conclusion

In light of the analysis of constitutional provisions and prevailing legislations on heritage protection, this paper has shown that current legal framework is insufficient for

long term heritage protection. Author concludes that wide reform in legal framework is needed for sustainable and responsible management of monuments and archeological sites ensuring the local community stewardship. Nepal's constitutional provisions call for the joint preservation of archaeological sites by all three tiers of government, but overlapping powers in the Schedules create confusion. Clear, harmonized laws are needed to redefine the distinctive and cooperative roles of all three tiers of the governments for effective conservation respecting local practices.

A core argument of this research is that State-imposed laws alone cannot ensure effective heritage conservation and it is supported by thorough analysis of legal instruments and case laws. In view of legislation, especially the AMPA (1956), though revised multiple times, is yet not enough to protect Nepal's rich cultural heritage ensuring the participation of communities and private stakeholders. The current law focuses too much on government control and does not properly respect private ownership or local traditions. This has created fear among property owners, leading some to hide or even destroy newly found heritage objects. The penalties in the law are also outdated and too weak to prevent serious damage or looting. Also, the law only talks about tangible heritage like monuments and statues, but does not include intangible heritage and traditional knowledge.

Consequently, it is necessary to draft a new comprehensive law that includes both tangible and intangible heritages, allows for real community participation, and respects local practices of conservation. The new law should also clearly define the roles of the Federal, State, and local governments to avoid confusion and conflict. The new law must provide for community engagement, financial incentives, and foster public-private partnerships for conservation funding. Blending traditional preservation techniques with modern methods and establishing an emergency heritage fund would enhance disaster resilience for heritage protection. Special rules are also needed for procurement procedure in heritage conservation to ensure quality and avoid low-cost but poor-quality work. To prevent fear and promote cooperation, the new law should include incentives for people who report or help preserve archaeological findings. It should also provide better legal protections for inherited private properties with heritage value, encouraging families and communities to take pride in preserving them. The study recommends the Federal Parliament to formulate new law on the protection of cultural heritage, ancient monuments and archeological sites.

In addition, legal reform is urgently needed in other relevant legislations as well to harmonize them with proposed new comprehensive law. Heritage protection legal framework must accommodate the role of communities to protect, maintain, and ensure the survival of cultural artefacts, respecting both their intrinsic value and their broader societal significance.

From the textual analysis of legislations and analysis of the judicial trends, it is found that local participation, traditional customs, and religious practices remain underutilized,

weakening institutions like *Guthi* Sansthan, KMC, PADT and GJADC. Case laws analysis shows that authorities in PADT and KMC had attempted several times to commercialize and exploit the heritage sites arbitrarily and even allowed private involvement without due process, requiring judicial intervention. It is found that judiciary has played proactive role in enforcing Nepal's international commitments on heritage protection and safeguarding local, communal and public interests arising out of heritages. The SC's decisions show a strong recognition of legal pluralism and community roles in heritage protection. These judgments should guide the drafting of new laws. To further strengthen the justice system's role, the SC is suggested to establish a special bench to handle cultural and heritage-related cases. This bench should include judges having cultural and historical expertise who understand legal, cultural, and historical matters, ensuring sensitive and informed decisions.

By advocating for legal reforms that balance modern conservation with Nepal's cultural traditions, this study provides a roadmap for sustainable heritage management through the implementation of legal pluralism. Future research should compare Nepal's policies with those of South Asia and other regions to develop more effective conservation strategies.

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