



Legal and Institutional Limitations for the Conservation of Built Heritage in Colombo

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Abstract

The built heritage in urban areas is severely threatened due to the increased demand for land and buildings for more profitable uses in the process of urbanization and urban development. Even though the areas have been identified and declared as conservation areas they have been kept aside and unattended which leads to several other harmful effects. Conservation on the other hand has become a challenging task due to various impediments and drawbacks in the institutional and legal structure in developing countries. The main objective of this paper is therefore to identify the limitations of the existing institutional and legal framework relating to the conservation and management of buildings with architectural and/or historical values in the city of Colombo by highlighting the issues and challenges in conservation of built heritage in emerging increased urbanization. In Sri Lanka, there are many measures taken for the protection of built heritage. Among them Department of Archaeology is the key institution overseeing the general legislative and policy framework. Colombo- the Colombo Municipal Council Area- which is selected as the case study of this article bears a historical value as it is located in a strategic position in the Indian Ocean. Currently Colombo is the Commercial Capital and the primate city in the country. Urban Development Authority (UDA) as the pioneering institution in urban development in the country has taken steps to conserve and manage the historical properties in Colombo by way of regulations and development projects along with the other stakeholders like Department Archaeology, and Colombo Municipal Council. However there are many issues and challenges still faced by the authorities in conservation and management of historical properties in the context of urbanization and urban development.

Introduction

In the phase of rapid urbanization the built heritage in urban areas become severely threatened due to the increased demand for space for more profitable uses. The developers, investors and the planners more enthusiastically search for high-rise structures to obtain the highest and best use of land, which consider only the long-term economic benefits. The potential that lies in underutilized historic buildings is rarely given the due recognition.

Even though properties or areas of historic value have been identified and declared as conservation areas they have been kept aside and unattended. This negligence leads to several other harmful effects such as vandalism, misuse, theft and deterioration. Additionally the conservation has become a challenging task due to various impediments

and drawbacks in the institutional and legal structure in developing countries.

Research Problem

Sri Lanka being a developing country is compelled to prioritize the needs and wants in allocating the limited resources for each sector while addressing many burning issues like unemployment, poverty and regional imbalances in development. In this context it may not be possible to address all the issues related to the conservation and proper management of historical properties of the country.

In addition to the limitations in allocation of resources for the conservation and management of historical properties, the historical buildings in urban settings are at a risk due to a special reason. The land in urban areas is scarce as many uses are competing for

limited lands in prime locations of urban areas. The city of Colombo which is the commercial capital of the country receives prominence in this case which records the highest land values in the country and a tremendous competition for locating more profitable uses in the limited land available. Hence conservation of historic buildings has high opportunity cost as there are many opportunities which yielding monetary benefits to be sacrificed for the sake of conservation. Under these circumstances the threat to the existence of historical buildings in the long run is not assured as the opportunity cost of conservation of historical buildings is very high because there are many foregone benefits in retaining these buildings as it is. Secondly the absence of an effective conservation program especially designed for Colombo further discourages the efforts of property owners.

Objective of the Research

The main objective of this paper is to identify the limitations of the existing institutional and legal framework relating to the conservation and management of buildings with architectural and/or historical values in the city of Colombo by highlighting the issues and challenges in conservation of built heritage in emerging trends in urbanization.

Methodology

Methodology of this research is basically consists of reviewing the documents especially to collect the information relating to the prevailing key legal enactments dealing with conservation of historic buildings in the case study area. The mandate of the institutions responsible for conservation of historical buildings has also been reviewed in this context. The discussions on the issues and challenges in conservation and management of historic buildings were based on the past research and reports prepared by the experts on the subject. The researcher's personal experience and the discussions conducted with the resource persons in the Urban Development Authority and the Department of Archaeology were also contributed in writing this research paper.

Conservation and Management of Historical Buildings in Sri Lanka: An Overview

In Sri Lanka, the Department of Archaeology is responsible for overseeing the general legislative and policy framework for protection of the built heritage in the country. The Antiquities Ordinance No. 9 of 1940 is the principal legal instrument for the protection of archaeological sites and monuments, ancient and historic artifacts and heritage properties. Besides that there are several other legal enactments directly or indirectly deal with the protection of places of natural and architectural beauty. Namely, Irrigation Ordinance No. 32 of 1946, National Heritage Wilderness Areas Act No. 3 of 1988, Town and Country Planning (Amendment) Act No. 49 of 2000 and Urban Development Authority Law No. 41 of 1978. Central Cultural Fund (CCF) established in 1979 is the statutory authority, which carried out heritage management and other functions in selected areas of the country. Its principal activity has been to formulate and implement the United Nations Educational, Scientific and Cultural Organization (UNESCO) – Sri Lanka Cultural Triangle Project that has been considered a model for heritage management in developing countries.

As stated above the Department of Archaeology is the key institution responsible for conservation and preservation of historical properties in Sri Lanka. The legal provisions made for the department to perform this task are through the Antiquities Ordinance No. 9 of 1940 and its amendments made respectively through Act No.2 and No. 22 of 1955, Act No. 24 of 1998 and Act No. 12 of 2005.

Preamble to the Ordinance was originally cited as '*An Ordinance to provide for the better preservation of antiques of Ceylon*'. Subsequently the amendments made in the year 1998 the title which introduces the Ordinance has been broadened covering a wider area than the earlier: '*An Ordinance to provide for the better preservation the antiques of Sri Lanka and of sites and buildings of historical or archaeological importance to Sri Lanka*'.

According to the powers and functions vested with the department, the department is responsible for conservation or preservation of two types of properties, namely, the antiques and ancient monuments.

Under the above Act the ownership of an antique has been explained in the Part I - Property in Antiques – Section 2 as follows:

- i) *‘Every ancient monument which on the date on which this Ordinance comes into operation is not owned by any person or the control of which is not vested in any person as trustee, incumbent or manager, shall be deemed to be the absolute property of the State.*
- ii) *All undiscovered antiques (other than ancient monuments); whether lying on or hidden beneath the surface of the ground or any river or lake or within the territorial sea of Sri Lanka shall be deemed to be the absolute property of the State, subject to the provisions of this Ordinance’.*

Part III of the Ordinance is about the ancient monuments. The section 16 of the principal Act and the amended Act specify the criteria for declaration of a monument as an ancient monument. They are:

‘...any specified monument which has existed or is believed to have existed for period of not less than hundred years shall notwithstanding that such monument does not or is not believed to date to a period prior to the 2nd day of march ,1815 be deemed to be an ancient monument....’

Section 17 of the Act further specified that even specified trees also can be declared as ancient monuments.

Once the declaration of any object which has any architectural or historic importance under the above Act the Department of Archaeology is vested with some powers to control the use or any changes to such objects in the interest of conservation. As per the section 43 A (i) of the ordinance and the stipulated regulations which published in the gazette extraordinary No. 1152/14 of 04 the October 2000, prior approval should be obtained from the Department before any development which is

to be carried out in the declared areas or objects. However the Department has limited resources especially the financial resources to implement an effective conservation management plan.

Historical Importance of Colombo

Colombo, the Colombo Municipal Council Area, which is the case study of this article, bears a historical value as it is located in a strategic position in the Indian Ocean. Colombo was under foreign domination for nearly three hundred years. The first Portuguese to put into the port of Colombo was almost by accident by Lourenco de Almeyda in 1505. Since then Colombo was under influence and domination of Portuguese till 1656. Dutch occupied Colombo and other parts of Maritime Provinces of the country from 1656 to 1796 – a period of 140 years. Thirdly, Colombo was captured by the British in the year 1796. The British dominated the country till 1948. After capturing the Kandyan Kingdom in the year 1815 by the British Colombo became the metropolis of the entire country. (Colombo Centenary Volume 1965)

As explained above Colombo was always under strong foreign influence until the country received the political independence in the year 1948. Hence the built form of the city represents the remains of “Western European culture” compared to the “traditional culture” found in other ancient cities like Anuradhapura, Polonnaruwa and Kandy. Many historical buildings found in Colombo belong to the British period. The areas developed before 1939 are Fort, Pettah, Slave Island, Galle Face, Kollupitiya, Cinnamon Gardens, Hultsdorf, Kotahena, Mutuwal and Modara.

Colombo is the Commercial Capital and the primate city in the country. Colombo served as both the Commercial Capital and the Administrative Capital since the colonial times until the segregation of two functions by establishing the new National Capital at Kotte Sri Jayawardanapura in 1980. The importance of Colombo still remains along with the development of harbor and institutions of financial and commercial activities.

The Colombo Municipal Area consists of 47 Municipal Wards covering 3729 hectares (37.3 Sq.Km.) of land which is the largest among the municipalities in the country. The Urban Development Authority (UDA) has grouped the entire area into 14 Planning Units based on the main land use characteristics and the spatial distribution of economic activities and functions in the city (City of Colombo Development Plan, Vol. I, 1999, UDA).

The current land use pattern of Colombo is an outcome of several interrelated factors like its history, location, accessibility; natural factors as well as planning and political decisions taken from time to time (Refer Table 01).

Activity	Percentage		
	1977	1996	2010
Residential	45.25	37.60	20.92
Commercial	05.39	06.03	28.21
Institutional	12.47	11.03	06.38
Industrial	04.04	04.00	
Transport & Utilities	16.36	17.43	18.77
Port Related			13.57
Open Spaces	03.80	07.03	09.52
Water	02.63	02.62	02.63
Other	10.06	14.26	
Total	100	100	100

Table 01: Percentage Share of Land Use Distribution in City of Colombo (1977-2010)
Source: City of Colombo Development Plan, Vol. I, 1999, UDA

The changing land use pattern indicates that there is a decreasing trend for the use of land for residential uses which indirectly express the demand for non-residential uses especially the transport, communication and utilities along with the development of commercial and financial activities. Also it is stated that 'Emphasis in the proposed Core Area Plan is to transform this scenario to make the city the commercial capital in the country. In order to make Colombo the commercial capital, more commercial, financial and banking sector activities are encouraged under this plan'. (City of Colombo Development Plan 1999).

As per the 2011 Census the City of Colombo had a total population of 555031. Besides the

resident population, Colombo attracts about 400,000–500,000 daily commuters coming to the City for various purposes. (World Bank, 2012).

Conservation and Management of Historical Buildings in Colombo: Legal and Institutional Framework

The Department of Archaeology as the government body responsible for conservation and preservation of historical properties in the country has similar powers and legal coverage to look after the historical buildings in Colombo as well. The powers are vested with the Department from its respective legal enactments as discussed previously.

Due recognition has been given in conservation of historic buildings in urban areas under legal enactments dealing with the urban planning in the country. One of the objectives of the Town and Country Planning (Amendment) Act No. 49 of 2000 is to 'provide for the protection of natural amenities, the conservation of natural environment, buildings of architectural and historic interest and places of natural beauty'. As per the amendment the previous department named as Town and Country Planning (T&CP Dept.) had been re-named as the National Physical Planning Department (NPPD). The NPPD is responsible for formulation of a National Physical Planning Policy (NPPP) and making and implementation of National Physical Plan of the country. The NPPD is therefore the policy making body of the urban and regional planning in Sri Lanka. The former Town and Country Planning Department as well as the current NPPD are actively involved planning and managing some sacred areas of the country. Though the NPPD has legal powers for conservation and management of areas or buildings with architectural and historic value their major commitment so far in this regard is areas outside the Colombo City.

The Urban Development Authority (UDA) which is the key institution for planning and management of urban areas in the country is vested with some powers related to the conservation of historic buildings as stipulated in the respective legal enactment called Urban

Development Authority Law No. 41 of 1978. In part II Section 8 a) of the law stipulated that the ‘UDA has powers to carry out integrated planning and physical development within and among the respective areas’. Also the UDA has powers to develop environmental standards and prepare schemes for environmental improvements in such areas. The term integrated planning and the powers given to prepare environmental improvement schemes imply the wide range of powers and functions covering the conservation and management of historical buildings in urban areas.

The Urban Development Authority (Amendment) Act No. 4 of 1982 further strengthens the powers and reinforced this fact. In the schedule following two aspects have been included among the matters for which provisions may be made in the Development Plan. They are:

- i) The control of architectural features, elevations and frontage of buildings and regulations for attaining urban design objectives.
- ii) The provision for preserving and promoting landscaping including preservation and planning of woodlands, trees and preservation of views and prospects, places of historical architectural interest and scenic beauty.

The conservation and management of historic buildings in Colombo similarly considered as an important aspect in the Development Plan prepared for the City of Colombo in the year 1999, and its amendment plan of 2008 which are still the base documents use to regulate and guide the development of the city. The second objective of this Development Plan is to conserve, revitalize, repair and cautious replacement of the architectural and historical masterpieces, urban scale of the national patrimony of individual buildings and the urban space in between which will lead to continuation of the urban fabric in harmony with the existing urban tissue.

Among the proposed projects and action programs included in this plan, the following have been identified as key projects to be implemented in collaboration with the Department of Archaeology with the support

of other stakeholders both in the public and the private sector.

- i) Revitalization of historic areas such as Fort and Slave Island and
- ii) Identification of architectural, archaeological and environmentally valuable buildings and areas

This Development Plan (1999) also includes a list of historic and architecturally valuable buildings to be preserved in Colombo which was prepared on the basis of Lewcock report. (Refer Table 02) (City of Colombo Development Plan 1999, Vol. 1, UDA).

Area	No of Buildings
Fort	76
Cinnamon Gardens	45
Pettah	33
Kotahena	31
Hultsdorf	21
Modara	11
Maradana	09
Kollupitiya	05
Galle Face	04
Borella	04
Slave Island	03
TOTAL	242

Table 02: Historical Buildings in Colombo
Source: City of Colombo Development Plan 1999, Vol. 1, UDA

The list prepared by the UDA has been sent to the Department of Archaeology for detail investigations and for necessary action. As per the information from the Department it is revealed that the Department has made arrangements to conduct detail studies on the list sent by the UDA and take necessary legal action to declare the selected buildings as ancient monuments under the respective legal enactment.

The Department of Archaeology has already declared about 39 properties in Colombo (CMC Area) as ancient monuments under the Antiquities Ordinance No. 9 of 1940 and its amendment Act No.24 of 1998 which is fairly a low percentage (16 %) compared to the number of historical buildings found in Colombo as listed by the UDA.

According to the zoning plan of the city, the Fort area has been classified as concentrated development zone. Generally this zone as specified by the UDA can have unlimited number of floors in the context of building density in the area. This specification seems somewhat contradictory to the character of existing historic buildings in the area which mostly consist of low rise single or two to three floors. Nevertheless development Guide Plan prepared for Colombo Fort has paid special consideration on the existence of some unique historical buildings like Cargill's and Gafoor Building, General Post Office, Transworks House Building and Presidential House with less than three floors with unique colonial architecture. Accordingly special measures have been taken to maintain these historic features in this core area and a project has now been initiated by the UDA to promote urban development in Fort and its environs through conservation and management of historical properties in the area.

Colombo Municipal Council (CMC) grants approval for construction, renovations, change of use or any changes to the existing structure of buildings under the special regulations formulated by the UDA for historical buildings.

Besides these measures there were some special attempts and considerations were given from time to time to address the issue of conservation and management of historical buildings in the country.

In the year 1979 a Cabinet Sub-Committee was established to draw up a Bill for the listing and protection of buildings and sites in Sri Lanka which is called Historic Building Act of 1980. This Bill makes provisions for listing buildings dating from after 1815 and provides penalties for demolitions or alterations of the listed buildings. This bill however did not come into operation

A study conducted by Ronald Lewcock, a consultant from United Nations Centre for Human Settlements (Habitat) in 1980 can be considered as the first attempt to investigate the situation of historic buildings in Colombo. Even though Lewcock report was prepared long time ago based on Colombo City, this

document is still considered as a valuable guide for conservation of historical buildings in Colombo as well as some recommendations and findings in this study provide policy guidelines and criteria for conservation of historic building at the national level.

In his report he stated that 'there is a strong case to be made for the active conservation of buildings and group of buildings in the Colombo Urban Area'. (Lewcock 1981) Following are the important aspects and recommendations made by Lewcock in his report.

- i) Proposed list of historic buildings and zones for the older parts of Colombo such as Pettah, Fort, Slave Island, Galle Face, Kollupitiya, Cinnamon Gardens, Huitsdorf and Kotahena. This list includes the other basic information like date of erection of buildings, names, use, relative retention value and other relevant information like architectural features, name of the Architect and prevailed condition.
- ii) Conservation and maintenance- Means for providing compensation and inducements to conserve and maintain historic buildings must be studied and regular inspection and advice to the owners to ensure.
- iii) Public involvement- Awareness programs through publicity campaigns. Formulation of public- action group to involve in conservation matters actively.
- iv) Formulation of policies for conservation.
- v) Declaration of conservation zones in selected areas of Colombo.
- vi) Measures to re-habilitate and upgrade such conservation zones and its immediate environs.
- vii) Training of Architects (professionals) in conservation.
- viii) Continue the work starting from surveys and listing of historic buildings for the rest of Colombo Urban Area while continuing the detail studies and research in the areas where preliminary studies have been completed by Lewcock.

Issues Related to the Conservation and Management of Historical Buildings

It is noted that heritage buildings have public good characteristics. Therefore, it is unlikely that private market would produce the optimal management outcome. Hence the intervention of the government in conservation and management of heritage properties is a social responsibility. The issues related to the conservation and management of historical buildings in Colombo therefore, can be discussed on the basis of this premises. The recommendations made by Lewcock in his report in the year 1981 on conservation and management of historic properties are of vital importance even to the current situation. He highlighted several issues in conservation and management of historical buildings and the recommendations were made to overcome them.

Lewcock stated that ‘conservation and management means providing compensation and encouragement, incentives given to the property owners to such initiatives’. The current approach to the conservation especially the provisions made in the Antiquities Ordinance No. 9 of 1940 and its amendments is rather biased towards enforcing strict regulations just to preserve the properties with historical value. The absence of any incentives or guidance to maintain such properties or to use them productively is therefore, the major drawback seen in the regulations. The absence of a regular inspection and monitoring mechanism along with the strict enforcement of regulations has lead to the violation of such regulations by the people. Especially, the conservation of historical buildings in Colombo is a challenging task where the land has become a scarce resource while there is a competing demand for available lands. Under this situation the market forces always induce to use the land for economic highest and the best use. The owners of historical properties therefore, have foregone many such economic benefits if they are to conserve these buildings. Hence, these foregone benefits to be compensated as recommended by Lewcock (1981). The current practice does not have any such incentive scheme. The absence of such measures resulted in illegal demolitions or the conversion of uses with alterations which is

not compatible to the original character of these buildings.

Public involvement is essential in conservation and management of historical properties if they are to be effective and sustainable in the long run. Lewcock (1981) also emphasized this fact in his report. There are many stakeholders that can be identified as “public”. The property owners as well as the general public, professionals, business community, non-government organizations etc, are the possible stakeholders who can contribute the conservation programs in many ways. This potential is so important in the event where the government funding becomes inadequate to cover all aspects of a conservation program. Nevertheless this potential has not been explored yet.

Except the legal provisions there is no national policy on conservation and management of historical buildings in the country. As a result the conservation programs are based on objectives individual to the projects implemented in different areas of the country. Further, Lewcock suggested the necessity of continuing the work starting from surveys and listing of historical buildings for the rest of Colombo Urban Area. The responsible institutions like the Department of Archaeology and the Urban Development Authority have to take necessary steps to continue these activities. A list prepared by the UDA has been sent to the Department of Archaeology for necessary action. This Department as the key institution therefore, has to take a leading role in taking further steps in this regard. As per the information provided by the Department of Archaeology very few historical properties (16% of the buildings listed by the UDA) have been declared as ancient monuments in Colombo.

The field investigations and observations by the researcher revealed that residential buildings which are of historical importance are at a great risk of destruction and demolition. Especially the residential buildings in the areas of Kotahena, Modara, and Mattakkuliya are almost neglected and there is no such effective program to safeguard them. As a result, these buildings are being demolished or modified without any notice. Comparatively historical buildings in Fort are

less threatened in terms of illegal demolitions or modifications. However, Colombo- Fort being the core area and the concentrated development zone as per the UDA classification, the conservation of historical buildings is rather a challenging task as the land in the area to be utilized to the highest and best use ensuring the maximum possible financial returns. Thus the opportunity cost of conservation of historical buildings is very high because there are many foregone benefits in retaining these buildings as in its original nature.

On the other hand the UDA has to address many other planning implications through the development plans and related regulations. As indicated in the CMR Structure Plan Vol. X 1998, they are:

- i) Demand for floor space.
- ii) Planning for appropriate locations.
- iii) Environmental problems connected with the location of activities in an adhoc disorderly manner.
- iv) Traffic and transport problems.
- v) Conversion of residential buildings for other activities.
- vi) Location of non-compatible activities in residential areas
- vii) Increasing rental values together with the increasing land values.
- viii) Infrastructure requirements.

Further it is stated that rationale for planning and development regulations is in the context of:

- i) Economic utilization of land.
- ii) Functional efficiency of the urban infrastructure system.
- iii) Social equity.
- iv) Sound environmental policy (CMR Structure Plan Vol. X 1998).

The analysis of planning implications and the remedial measures indicate the necessity of proper utilization of the land and its assets. The absence of adequate research on the conservation of historic buildings in urban areas especially the areas like economic valuation of historic buildings and the behavior of the property market and its impact on the conservation of historical buildings have not been studied well. Hence the absence

of required data to formulate effective programs is also an issue.

Conclusions

Colombo as the commercial capital as well as the primate city of the country receives national importance in any effort taken to formulate development plans compared to the other towns in Sri Lanka. Emerging trends of urbanization and urban development on the other hand make this task more challengeable. This importance on the other hand has made a great pressure on land in the context of competing demand for various uses. The conservation of historical buildings and monuments therefore, has become a challenging task as it carries high opportunity cost. This research therefore urges to look for the possibility

- of amending or formulating specific regulations to eliminate the drawbacks exists in the following areas, namely Incentive scheme(s) for historical property owners, flexibility in adaptive use of historical buildings,
- of taking necessary steps to conduct a base line survey on historical buildings in Colombo preferably in collaboration with the Urban Development Authority, National Physical Planning Department, Department of Archaeology and the Colombo Municipal Council (CMC) to have an updated data base on historical buildings in the city which facilitates the listing of historical buildings
- of formulating a mechanism for more coordinated approach towards conservation of historical buildings. For example Coordination among key government stakeholders like UDA, NPPD, Department of Archaeology and CMC.
- of obtaining maximum possible participation of property owners in designing and implementing conservation programs.
- of formulating a mechanism to monitor the conservation activities regularly.

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