

AFTERMATH OF AYODHYA VERDICT: IMPACT ON KASHI AND MATHURA

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ABSTRACT

Ever since the largely awaited verdict in the Ayodhya, Ram Janmbhoomi- Babri Masjid case was pronounced by the Hon'ble Supreme Court of India, questions concerning similar disputed sites in Kashi (Varanasi) and Mathura have started assuming importance. With Bharatiya Janta Party (BJP) in a full majority in Lok Sabha, Muslims are fearful that Kashi Vishwanath Temple (Gyanvapi Mosque) and Krishna Janmbhoomi Temple (**Shahi Idgah Mosque**) might meet the similar fate of Babri Masjid. However, that just might not be the case because of the protection provided in the Places of Worship (Special Provisions) Act, 1991 and Hon'ble Supreme Court's Judgement in the Ayodhya case which apart from the resolution of the disputed site also talks about the Places of Worship (Special Provisions) Act, 1991, which casts a legal and a constitutional duty on the Government of India, to prevent the secularism of the country.

Keywords: Ayodhya Kashi, Mathura, Constitutional Duty, Secularism.

Abbreviations: BJP, Bhartiya Janta Party, VHP, Vishwa Hindu Parishad, RSS, Rashtriya Swayamsevak Sangh.

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INTRODUCTION

The well-heard cry, “*Ye toh pehli jhaanki hai, abhi Kashi-Mathura baaki hai*”, the translational decryption of the same is- **Ayodhya, Ram Mandir (Babri Masjid)** is just the very first sight and **Varanasi, Kashi Vishwanath Temple(Gyanvapi Mosque)**, and **Mathura, Krishna Janmbhoomi Temple (Shahi Idgah Mosque)**, are soon going to follow the path of **Ayodhya**.

The first instance of the usage of the above-mentioned slogan can be dated back to the 1980s to the 1990s. It gained the optimum momentum during the Ram Rath Yatra, conducted by the BJP and its religious affiliates under the leadership of Shri Lal Krishna Advani, who was the president of the party then, which lasted from September to October of the year 1990. The slogan had gradually dried out since the demolition of the Babri Masjid in the year 1992. But since the pronouncement of the landmark judgement by the Supreme Court on 9th of November, 2019 in the case of *M Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors*⁴(Ayodhya Dispute), the subdued cry or demand for temple restoration at disputed sites of Kashi and Mathura is again gaining the lost ground and momentum.

In the long-awaited unanimous verdict delivered by the Hon'ble Supreme Court, the court relied on a report prepared and filed by the Archaeological Survey of India (ASI) and stated that it provided relevant and reliable proof that the remnants of a structure "that was not Islamic" was present below the demolished Babri mosque. The court stated that, given all the proof in front of the court, it had concluded that the land in question should be handed over to the Hindu parties involved for the construction of a temple, while the Muslim parties involved would be given a separate allotment to enable them to make its mosque. It then gave a direction to the Central govt. establish a trust to manage and oversee the development of the Lord Rama temple. However, the SC also stated that demolishing the Babri mosque was a violation of the laws of our country.

The said verdict is considered as a win for the Hindu side and they consider this as a stepping stone for the reclamation of the other two sites in dispute. But the Gyanvapi Mosque and the Shahi Idgah Mosque might not meet the same fate as the Babri Masjid because of the provisions contained in the Places of Worship (Special Provisions) Act, 1991. The act was

⁴*M Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors*, Civil Appeal Nos 10866-10867 (Supreme Court,09/11/2019)

passed during P.V. Narasimha Rao's first year in office as The Prime Minister of India, in September 1991. It prohibits the conversion of places of worship — like temples, churches, mosques — into places of worship of a different religious faith. The Act was passed at the optimum height of the Ram Janmabhoomi movement and was intended at deterring any other possible politico-religious agitation. Section 4 of the Act intends to preserve the “religious character” of a place of worship, as it existed on 15 August 1947. It also states that any court proceeding regarding any such conversion would come to a halt or cease after the Act comes into force. However, Section 5 of the Act specifically exempts the Ram Janmabhoomi - Babri Masjid dispute, and any relevant court proceedings concerning it. It goes on to provide for three-year imprisonment and also provides for payment of fine for the conversion of places of worship.

The major questions arising out of the prevalent facts and circumstances which require answers are:-

- Will Bhartiya Janta Party (BJP) and its affiliates, mainly, Vishwa Hindu Parishad (VHP) and Rashtriya Swayamsevak Sangh (RSS) pause after Ayodhya, or will they proceed towards the reclamation of disputed lands in Kashi and Mathura as well?
- If they desire to proceed towards the reclamation then how will they overcome the roadblocks, especially, the Places of Worship (Special Provisions) Act, 1991?

KASHI VISHWANATH TEMPLE- GYANVAPI MOSQUE DISPUTE

Kashi Vishwanath Temple is one of the most renowned Hindu temples committed to Lord Shiva. It is situated in Vishwanath Gali of Varanasi, Uttar Pradesh, India. Lord Shiva's homestead is viewed as the greatest focal point of the Hindu confidence. The Temple stands on the west side of where the Ganga river flows. The principal god is remembered in the true nature by the titles of Shri Vishwanath and Vishweshwara. From ancient times, Varanasi has also been renamed Kashi, and the temple is therefore rightly identified as Kashi temple.⁵

In 1669 CE, the temple was demolished by Mughal Emperor Aurangzeb and a mosque was built there. The remains of the temple can still be identified in the mosque. In recent times some old facts have been submitted by the Hindu side in the courts which prove that the place

⁵Vishwanath Gali - The Serpent Around Shiva - Varanasi Guru Varanasi Guru, <https://www.varanasinguru.com/vishwanath-gali/> (last visited Oct 24, 2020)

belongs to the Hindus. The document submitted was issued by a courtier of Aurangzeb on 18th April 1669. The document states that when Aurangzeb received the news that in some sub-urban areas of Multan and Banaras, some Brahmins are teaching their junk books in school. After hearing this Aurangzeb issued a decree asking all such schools to be demolished. Temples were destroyed as well.

The temple which is now in ruins is a subsequent reconstruction of the first temple present at the same location. On different occasions, the first temple was pummeled and restored. The temple framework that was there before the mosque's construction was most likely constructed during the Mughal rule.

In 1698, Bishan Singh, the leader of Amber, showed a drive to assemble the Kashi Vishwanath temple. His specialist agents reviewed the encompassing area in detail and about different cases and debates for the land. Bishan Singh's court bought the land around the Gyanvapi area, however was fruitless in remaking the temple.

The Maratha ruler Malhar Rao Holkar decided to destroy the mosque in 1742 and rebuild the temple. Whatever was the start, his plan was futile, midway given the imbalance created by the Lucknow Nawabs, who governed the region. Subsequently, in 1780, Ahilyabai Holkar, the daughter-in-law of Malhar Rao, built the present temple, which is a nearby mosque.⁶

In the 1990s, especially after the demolition of the Babri Masjid in December 1992, the VHP raced to reclaim the locations of the mosques that they acknowledge were taken when demolitions of temples were done and after the demolition of the Babri masjid, about 1,000 policemen were transported to quell a similar occurrence at the site of the Gyanvapi mosque.⁷The BJP pioneers, who upheld the interest for "reclaiming" Babri Masjid, restricted VHP's comparative interest in the Gyanvapi mosque.

Further, in 2018 the Hindu side demanded an entire survey of the mosque by the Archaeology Department. Initially, a suit was filed in 1991, demanding for the Gyanvapi mosque to be entirely handed over to the Hindus and evacuation of the Muslims from the place. The mosque, however, is presently protected under section 4 of the Places of Worship (Special

⁶Vishwanath Gali - The Serpent Around Shiva - Varanasi Guru Varanasi Guru, <https://www.varanasi-guru.com/vishwanath-gali/> (last visited Oct 24, 2020)

⁷BBC NEWS | World | South Asia | Cracking India's Muslim vote News.bbc.co.uk, http://news.bbc.co.uk/2/hi/south_asia/3564693.stm (last visited Oct 24, 2020)

Provisions) Act, 1991. The question which arose after this was to determine whether there existed a mosque or a temple on 15th August 1947.

Now as the construction of the Ayodhya Temple has started, Kashi Vishwanath is the next target as said by some of the leaders of the nation. Fact is, the Sanghis are never known to wait for the court verdicts and they might do the same this time as well. By which we can say that there is a fear as similar as in the Mathura dispute i.e., before the court gives its verdict, there might be an event as same as the Babri Masjid.

MATHURA KRISHNA JANMBHOOMI- SHAHI EIDGAH MOSQUE DISPUTE

The Ayodhya dispute had barely settled down, but it became very easy to see that the Shahi Idgah near the Krishna Janmabhoomi Temple in Mathura was the immediate potential prey of the BJP. In 1993 the BJP leaders openly claimed that the Krishna Janmabhoomi Temple is to be reclaimed now exactly as the Ayodhya has been. It was not on their “agenda immediately” as claimed. Now, as the Ayodhya case has been settled down, many BJP leaders have given statements which state that the Kashi-Mathura dispute is the next on their agenda. But before anything else, the construction of the Ayodhya Temple is to be focused on right now.

The VHP President Vishnu Hari Dalmia had stated that “we will certainly implement the 1984 resolution but at the moment we want to concentrate on Ayodhya till the temple is built there”. The 1984 resolution was formally adopted only in June 1989. The resolution talked about how the BJP leaders wanted to remove the three mosques build by the ‘Muslim Marauders’ at Ayodhya, Mathura, and Kashi.

Manohar Lal Sharma, a resident of Brindaban, took the matter to the court. He had filed a case in the Allahabad High Court seeking a restraint on the Muslim offering namaz 5 times a day ever since the Babri Masjid Demolition. Earlier the namaz was offered only twice a year i.e., on Id-ul-Fitr and Id-ul-Zoha. The petition also seeks the quashing of the Places of Religious Worship Act of 1992 which recognized the status of all shrines and places of worship with effect from August 15, 1947.

To prevent the repetition of the Ayodhya events and, a CRPF battalion and the state police were deployed by the government, after withdrawing the Provincial Armed Constabulary. This happened in December 2012. The Trust requested that the CRPF be withdrawn. As mentioned by a senior official, it was planned to get possession of the supposedly disputed

area and strengthen its assertion over the Idgah full and finally. They said they were in urgent need of the land, to start the construction for religious activities.

Another petition was filed by Abdul Haq challenging the petition filed by Manohar Lal Sharma. Abdul Haq was the principal of the Islamic Inter College. He claimed that the entire complex belonged to the Shahi Idgah Masjid Committee and not the temple. The petition was presented before the two-member bench Hansman Singh and D.P.S. Chavan.

The dispute was until the year of 1935. The topic of the entire conflict was the possession of the Thirteen points thirty-seven acres of land where the idgah and the shrine were situated. This situation prevailed whilst the HC of Allahabad confirmed the right of possession of the King of Varanasi over the land on which an idgah had been built by Aurangzeb in 1669 next to the ruins of the Temple of Keshavnath, which was considered to be the place where Krishna Ji was born.

In the year 1951, an industrialist Yugal Kishore Birla, who had brought the land in 1944, launched the Shri Krishna Janmabhoomi Trust to take forward the construction of Krishna's birth-place. In the year 1968, a consensus was reached through an agreement granting the ownership to the temple trust, dominated by the VHP including Dalmia, even as the management rights were left off to the idgah committee for the management of the masjid.

The agreement though deprived the legal rights of the trust to stake a claim on the masjid. Meanwhile, Sharma has filed another appeal in the Mathura D.C which challenged the consensus reached in 1968. But the Sanghis have not always been known to wait for court verdicts. And it may not do so this time either. By which we can say that there is a possibility that before the court verdict there might be an event as same as the Babri Masjid.

RELEVANT STATUTORY PROVISIONS, PRECEDENTS, AND JUDGEMENTS

M Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors (Ayodhya Dispute)

After the pronouncement of the Ayodhya verdict by the Supreme Court on 9 November 2019, concerns have been continually expressed about similar trends being initiated over matching conflicts, like those happening in Varanasi and Mathura. However, in this scenario, the judgment's discussion on the Places of Worship (Special Provisions) Act, 1991, should receive severe importance.

In the judgment, the court transcends and emphasizes the legal duty cast on and vested with the Government to protect places of worship under and as per the Places of Worship (Special Provisions) Act, 1991, and asserts the fact that the law merely affirms the already existing constitutional duty of the state and the Government to preserve secularism — which is one of the main ingredients of the “basic structure” of the Constitution.

The observation in this judgment strengthens the mandate of the Places of Worship (Special Provisions) Act, 1991 — which was passed amidst severe opposition from several BJP leaders.

The Supreme Court’s judgment in the Ayodhya dispute underlines the objective of the Places of Worship (Special Provisions) Act, 1991.

“Historical wrongs cannot be remedied by the people taking the law in their own hands,” the five-judge bench unanimously said in its verdict referring to the “historical wrongs” that Uma Bharti specified about in the Parliament back then.

Furthermore, the verdict went on to detach the State’s responsibility from the Act and affirmed it as a constitutional duty of the Government to preserve secularism. The court cited the judgment in *SR Bommai v Union of India*⁸, where a bench of nine judges held secularism to be a part of the “basic structure of the Constitution of India”.

The basic structure doctrine was recognized by the Supreme Court of India in its 1971 judgment in *Kesavananda Bharti v State of Kerala*⁹ when the bench with a 7 to 6 majority held that the “basic structure” of the Constitution of India cannot be altered even with a constitutional amendment. To conclude, the doctrine bars the Parliament from bringing in any amendments that could alter the Constitution’s basic structure.

Supreme Court termed the act as a legislative intervention that aims at the preservation of non-retrogression as an essential feature of our prevalent secular values.

⁸SR Bommai v. Union of India, AIR 1918, 1994 SCC (3) 1 (India).

⁹Kesavananda Bharti v. State of Kerala, AIR 1973 SC 1461(India).

Therefore, the court made it not just a mere legal duty but rather a constitutional duty of the current and the future governments to protect other places of worship prevalent in the country, so that there is no uprise of an Ayodhya-like dispute, anywhere else in the Country.

The Supreme Court's affirmation of the State's obligation confirms that any aggression on a place of worship would not only be against the law created in 1991, but it will also be a violation of one a constitutional duty of the Government.

THE PLACES OF WORSHIP (SPECIAL PROVISIONS) ACT, 1991

➤ The statement of objects and reasons of the Places of Worship (Special Provisions) Act, 1991 reads as, "An Act to prohibit conversion of any place of worship and to provide for the maintenance of the religious character of any place of worship as it existed on the 15th day of August 1947, and for matters connected therewith or incidental thereto".

➤ Section 3 of the Places of Worship (Special Provisions) Act, 1991 provides for:-

"Bar of conversion of places of worship.—No person shall convert any place of worship of any religious denomination or any section thereof into a place of worship of a different section of the same religious denomination or a different religious denomination or any section thereof."¹⁰

Section 3 prohibits any person from converting any existing religious place of worship into a place of worship of a different religious faith or ethnicity.

➤ Section 4 of the Places of Worship (Special Provisions) Act, 1991 states:-

"Declaration as to the religious character of certain places of worship and bar of jurisdiction of courts, etc.—(1) It is hereby declared that the religious character of a place of worship existing on the 15th day of August 1947 shall continue to be the same as it existed on that day.

(2) If, on the commencement of this Act, any suit, appeal, or other proceedings to the conversion of the religious character of any place of worship, existing on the 15th day of August 1947, is pending before any court, tribunal, or other authority, the same shall abate,

¹⁰The Places of Worship (Special Provisions) Act, 1991, §3, No. 42, Acts of Parliament, 1991 (India).

and no suit, appeal or other proceedings for any such matter shall lie on or after such commencement in any court, tribunal or other authority: Provided that if any suit, appeal or other proceedings, instituted or filed on the ground that conversion has taken place in the religious character of any such place after the 15th day of August 1947, is pending on the commencement of this Act, such suit, appeal or other proceedings shall be disposed of by the provisions of sub-section (1).

(3) Nothing contained in sub-section (1) and sub-section (2) shall apply to,—

(a) Any place of worship referred to in the said sub-sections which is an ancient and historical monument or an archaeological site or remains covered by the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958) or any other law for the time being in force;

(b) any suit, appeal or other proceedings, with respect to any matter referred to in sub-section (2), finally decided, settled or disposed of by a court, tribunal or other authority before the commencement of this Act;

(c) Any dispute with respect to any such matter settled by the parties amongst themselves before such commencement;

(d) Any conversion of any such place effected before such commencement by acquiescence;

(e) Any conversion of any such place effected before such commencement which is not liable to be challenged in any court, tribunal or other authority being barred by limitation under any law for the time being in force.”¹¹

Section 4 of the Act intends to preserve the “religious character” of any place of worship, as it existed on 15 August 1947. It also provides that any court proceeding ongoing regarding any such conversion would come to cease after the Act comes into force.

➤ Section 5 of the Places of Worship (Special Provisions) Act, 1991 provides for an exception with respect to the applicability of the act, it excludes Ram Janmabhoomi-Babri Masjid dispute from the applicability realms of the Act.

Section 5 of the Act states:-

¹¹The Places of Worship (Special Provisions) Act, 1991, §4 No. 42, Acts of Parliament, 1991 (India)

“Act not to apply to Ram Janma Bhumi-Babri Masjid.—Nothing contained in this Act shall apply to the place or place of worship commonly known as Ram Janma Bhumi-Babri Masjid situated in Ayodhya in the State of Uttar Pradesh and to any suit, appeal or other proceeding relating to the said place or place of worship.”¹²

- Section 6 of the Act provides for penal provisions for any person acting in contravention of Section 3 of the act. It goes on to provide for three-year imprisonment and also provides for payment of fine for the conversion of places of worship.

Section 6 of the Act reads as follows:-

“Punishment for contravention of section 3.—(1) whoever contravenes the provisions of section 3 shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

(2) Whoever attempts to commit any offence punishable under sub-section (1) or to cause such offence to be committed and in such attempt does any act towards the commission of the offence shall be punishable with the punishment provided for the offence.

(3) Whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under sub-section (1) shall, whether such offence be or be not committed in consequence of such abetment or pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 Of 1860), be punishable with the punishment provided for the offence.”¹³

In essence, it can be concluded that the prevailing judgements, precedents, and statutory provisions are safeguarding the sites at Kashi and Mathura from going the way of Ayodhya.

CONCLUSION

Although there might be a subdued fear that Kashi and Mathura might go down the same road as that of Ayodhya and BJP and its allied forces namely, RSS and VHP might eventually achieve their goal in the totality of reclaiming the disputed sites. But, this just might not be the case. Even after bringing about a similar agitation to that of Ayodhya, the eventual result of the disputes might not pan out in the most desirous way for BJP and its

¹²The Places of Worship (Special Provisions) Act, 1991, §5, No. 42, Acts of Parliament, 1991 (India).

¹³The Places of Worship (Special Provisions) Act, 1991, §6, No. 42, Acts of Parliament, 1991 (India).

allied forces because of the statutory provisions of the Places of Worship (Special Provisions) Act, 1991 and also due to the constitutional duty cast on the Govt. of India, as per the judgement in the Ayodhya dispute.

Vinay Kattiar and Dr. Subramaniam Swamy, two BJP leaders, claimed that they will do everything possible to regain the disputed site. The latter went on to form committees to take the work forward but the result might be nil.

As of late, on the problem of the Shahi Idgah mosque of the 17th century, some people collectively moved to Mathura D.C within the 13.37 portion of the temple's land premises called Katra Keshav Dev. The case was heard before a civil judge from the senior division, request for cancellation of a previous decision of the Mathura Court, ratifying a deal concluded between the Shri Krishna Janmasthan Seva Sansthan and the Shahi Idgah Management Committee on the mosque. However, the court did away with the appeal which was looking for removing the mosque close to the place where Lord Krishna is believed to be born. This might conceivably be the sign of what the future holds for these two particular questioned destinations.

