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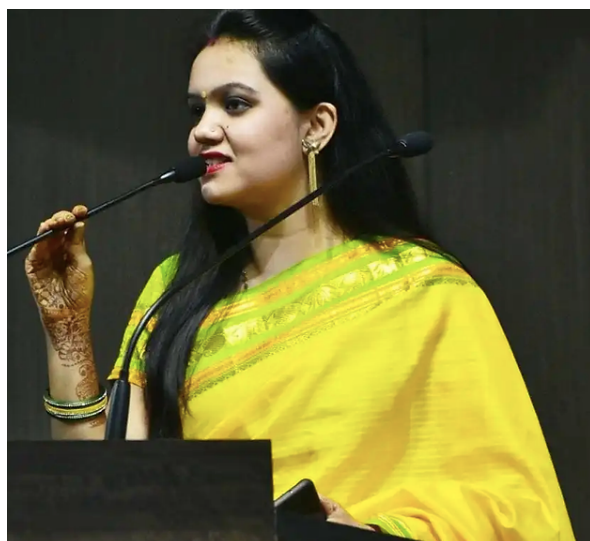


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The Legal Vidya is a student(s) initiative run online journal (Two Issues Per Year) started in 2020 with the aim of reaching youths of the nation, budding lawyers, students and academicians to bring forth the legal knowledge at your fingertips.

We are here to provide you with a lucid way of learning law with the help of daily blogs pertaining to the latest/other legal issues going on in the country.

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AYODHYA TO SIRF JHANKI HAI, KASHI, MATHURA BAAKI HAI

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Abstract: *The cultural and religious diversity has always been diverse in India. The past few centuries saw a lot of demolitions and constructions for a lot of cultural and religious sites. The Ram Janam Bhumi judgement, raised hopes for a lot of people regarding the Kashi Vishwanath Temple dispute. The present article brings together all about the Kashi Vishwanath Temple case, also known as the Gyanvapi Mosque case and the relevance of The Places of worship Act, 1991. The article further discusses about the stirring debate on the constitutional validity of the Places of Worship Act.*

INTRODUCTION

The court has revived the long-buried claims made by several Hindu organizations over the Gyanvapi mosque in Varanasi and the Shahi Idgah in Mathura, leaving a loose end in the Ayodhya dispute in favour of the Ram temple's proponents.¹

Everyone who has been to the Kashi Vishwanath temple is aware of the majestic and kind statue of Nandi, Lord Shiva's bull. The monument, which stands 2 metres tall and faces the Gyanvapi mosque wall, Nandi is intended to be facing the primary god Lord Shiva, either in the shape of an idol or as the Linga, according to those who are familiar with Hindu traditional architecture. This has confounded researchers as to where the true sanctum sanctorum is for decades.

HISTORICAL EVENTS AND FACTS

According to anecdotal history, the priests of the temple were forced to remove the Shivalinga and buried it in a well that exists between the Kashi Vishwanath temple and the Gyanvapi mosque before Mughal emperor Aurangzeb attacked Varanasi and ordered the destruction of the Kashi Vishwanath temple in September 1669. As a result, when the attackers arrived, they were unable to locate the temple's main god, and it was spared damage. According to historical accounts, Muslim conquerors were individualists who would deface Hindu deities since people do not pray to damaged statues. As a result, a swarm of bees struck the attackers as they rushed toward the Nandi to demolish it, while also smashing the temple's structure, ornaments, and furnishings. The statue of Shiva's bull was left unharmed as the army retreated. The story goes like this.

The Shiva temple close to the Gyanvapi mosque was rebuilt by Queen Ahilyabai Holkar of Indore over a century after Aurangzeb's siege, and Maharaja Ranjit Singh of Punjab helped by contributing two tonnes of gold to enclose the temple's sanctum sanctorum. In its current shape, this is the shrine that we all go to. It wasn't intended to be erected directly on top of the original location, but rather close by.

According to a court ruling, a filmmaking team has gathered proof to show that whether main temple was at the location of the present-day Gyanvapi mosque after years of debate concerning the old temple's original position. Some intriguing discoveries are supposed to have been made inside the mosque, including Sanskrit hymns penned on structures, flowers, and swastika signs used as wall decorations. It is also said that under the Shringar Gauri rock, Vishnu's hood and Lord Brahma's lotus have been seen.

The news that a Shivalinga was discovered in a well or body of water that Muslim worshipers used for wazoo, or cleansing themselves before prayers, is the most noteworthy. While the Muslim side disputes that it is a fountain, the petitioners assert that the discovered building is unquestionably a Shivalinga because it lacks a water conduit and is directly in front of Nandi from a directional standpoint.

¹ (M. Siddiq vs. Mahant Suresh Das, 2019)

The first religious parliamentary was held in Delhi in 1984, with about 558 Hindus in attendance. They planned to launch a national campaign encouraging Hindus to claim the holy sites in Mathura, Ayodhya, and Varanasi. The Ram Janma Bhumi-Babri Masjid Conflict in 1990, led to the spread of this movement. The Hindu religious organisations concentrated on two mosques: (1) Shahi Idgah Mosque, next to the Lord Krishna Temple in Mathura, and (2) Gyanvapi Mosque, next to the Kashi Vishwanath Temple in Varanasi, despite the urge to lay claim to over 3000 mosques in the sites indicated above.

The slogan, "Ayodhya to sirf jhanki hai, Kashi, Mathura baaki hai," became popular.

The Places of Worship (Special Provisions) Act was passed in 1991 by the PV Narsimha Rao administration as a result of the aforementioned actions. The BJP, on the other hand, rejected it and mocked Congress for bringing the legislation into being in order to satisfy Muslims and protect their voter base.

A map of the complete Gyanvapi complex, which includes the Vishweshwar temple, Gyankoop, the large Nandi, and the basement of the Vyas family, was shown in court by Vijay Shankar Rastogi, who is representing the Hindu side. The map shows the temples of Hindu gods that are located nearby after the mosque's entry. The survey and filming of this basement have been the subject of debate. The Muslim side counters that the Religious Places Act of 1991 prevents a judgement on the case.

The petitioner also argued that because the Gyanvapi mosque was constructed atop a partially ruined temple, the Places of Worship (Special Provisions) Act, 1991, did not apply in this instance.

After the proceedings, a trial court in Varanasi declared in 1997 that the Places of Worship (Special Provisions) Act, 1991 prohibited the petitioners' requested remedy. Revision petitions were then filed, consolidated, and considered before the Varanasi high court.

AIM Committee filed a petition with the Allahabad High Court in 1998, arguing that Section 4 of the Places of Worship (Special Provisions) Act, 1991 prevented a civil court from deciding the matter. The civil court case had been ongoing for 22 years until the Allahabad High Court issued a stay order.

Prime Minister Modi laid the cornerstone for the Kashi Vishwanath temple corridor in March 2019. The corridor will be expanded and adorned with Makrana marble, Kota granite Mandana, and Baleshwar stones to enhance the temple and its surroundings. After the \$1 billion renovation is finished, the temple will be directly visible from the Ganga ghat. When a contractor dismantled Chabootra close to the Gyanvapi mosque's gate number 4 as part of the corridor project in October 2019, it sparked racial tensions in the neighbourhood. However, following the local Muslims' objection, the contractor quickly rebuilt the damaged building. The Sunni Central Waqf Board owns the mosque.

One month after the Supreme Court's Judgement in the case of Babri Masjid-Ram Janmabhoomi , in December 2019, the petition was filed again by Advocate Vijay Shankar Rastogi on behalf of the Swayambhu Jyotirlinga Bhagwan Vishweshwar. Archaeological survey of the Gyanyapi mosque was requested in the petition. The advocate described himself as the major deity's "next friend." He said that the first extra district judge had instructed

a lower court to gather evidence from the whole Gyanvapi complex in 1998 in order to ascertain the site's religious character. Nevertheless, the Allahabad HC halted the lower court's decision.

The Varanasi court directed the ASI to carry out the archaeological survey on the specified location despite the Allahabad High Court's stay of the trial.

THE PLACES OF WORSHIP ACT, 1991

1991 was the year, the Ram Janmabhoomi movement was at its height. Prior to P V Narasimha Rao taking office as prime minister, the nation had just seen religious riots in Gujarat, Uttar Pradesh, Karnataka, and Andhra that left dozens of people dead.

At that time, the Rao administration passed a legislation in an effort to prevent any such disputes over who owns and defines a house of worship in the nation. This was put in place to avoid another Ram Janmabhoomi movement-style dispute. A year later, the Babri mosque in Ayodhya was destroyed.

S B Chavan, who was the home minister at the time the bill was introduced, said that it would essentially stop any fresh disputes from developing about the conversion of any religious building.

The Act is described as "*An Act to prevent any religious building from being converted and to provide for the maintenance of such place of worship's religious character as it existed on the 15th day of August, 1947, and also for issues connected therewith or incidental thereto.*"²

According to the Places of Worship Act of 1991,³ which was passed on the day India gained independence in 1947, a religious site's nature cannot be changed. Therefore, a structure cannot be converted into a mosque, church, or gurdwara if it was being utilised as a temple on August 15, 1947.

While Section 4(2)⁴ of the Act states that any litigation or legal procedure ongoing before any court for the conversion of the religious character of any religious building existing on August 15, 1947 must be dissolved. Furthermore, no new litigation or legal processes shall be initiated.

The BJP in Parliament has fiercely opposed the Bill. Uma Bharti posed the following question in reference to the disagreement between the Kashi Vishwanath temple and the Gyanvapi mosque: "*Was it Aurangzeb's goal behind leaving the temple's ruins at the site of the mosque, to keep reminding Hindus of their historical fate and to remind future generations of Muslims of their prior splendour and power?*"⁵

A five-judge Supreme Court panel that decided in favour of the Hindu claimants in November 2019 made extensive use of the 1991 Act.

² PLACES OF WORSHIP (SPECIAL PROVISIONS) ACT (1991).

³ *Ibid.*

⁴ PLACES OF WORSHIP (SPECIAL PROVISIONS) ACT § 42 (1991).

⁵ Harikishan Sharma, *Pigeon closes eyes as cat advances: 1991 Lok Sabha, when Uma Bharti flagged Gyanvapi and opposed Worship Bill*, Political Pulse News, The Indian Express (May 19, 2022), indianexpress.com/article/political-pulse/gyanvapi-mosque-uma-bharti-worship-bill-1991-lok-sabha-7924342/.

Parliament has expressly commanded that past and its wrongs should not be used as tools to oppress the present and the future in order to preserve the character of public places of worship.⁶

The bench headed by the then-CJI Ranjan Gogoi had stated that they were creating an exception in the matter of Ayodhya since it was an ongoing incident while upholding the integrity of the Places of Worship Act, 1991. "*History and its wrongs should not be utilised as instruments to oppress the present and the future,*" the bench had said.⁷

There is a prohibition on the conversion of a religious site from one faith to another, as stated in Section 3 of the Places of Worship (Special Provisions) Act, 1991.⁸ Due to this section's importance in the aforementioned situation, the legitimacy of the whole Act as a whole is also under doubt.

The Gyanvapi complex is a Hindu temple, not a mosque, according to the Hindu side. Furthermore, no orders had been issued by the Mughal Emperor Aurangzeb to establish a waqf over the property in question or to transfer ownership of the land to any Muslim organisations or individuals.

The Places of Worship Act of 1991 has been cited exclusively by the Muslim side, on the other hand. The prohibition under Section 4 of the Act prohibits bringing any legal action or starting any other legal process for the modification of any place of worship's religious character as it existed on August 15, 1947.

Ram Janmabhoomi-Babri Masjid is an exemption to The Places of Worship Act, 1991's as mentioned in Section 5.⁹

Recently, the constitutional validity of the places of worship act is also in question. The act puts a bar on the jurisdiction of the courts to intervene and further restricts the applicability of Fundamental rights enshrined under article 32¹⁰ of the Indian constitution. These rights can only be suspended if or otherwise prescribed by the constitution.

Articles 32 and 226¹¹ confers the power of judicial review on the supreme court and the high court respectively. The power of judicial review forms an integral part of the basic structure of the constitution.¹² Article 13(3)¹³ imposes an obligation that all laws, orders, bylaws, ordinances, constitutional changes, and other notifications come under the ambit of judicial review. In *T. Venkata Reddy v. State of Andhra Pradesh*,¹⁴ it was determined that ordinances issued with purpose, without application of mind, or out of necessity cannot be questioned, just as legislative power cannot be.

Section 4 of the places of worship act bars the remedies against illegal encroachment on places of worship and further states that there will be a continuation of the existence of the religious character of a place of worship as it

⁶ Manu Sebastian, *Ayodhya Verdict Is Not A Precedent To Correct Alleged Historic Wrongs By Previous Rulers*, (Nov. 10, 2019), www.livelaw.in/columns/ayodhya-verdict-is-not-a-precedent-to-correct-alleged-historic-wrongs-by-previous-rulers-149654.

⁷ M Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors, (2020) 1 SCC 1.

⁸ PLACES OF WORSHIP (SPECIAL PROVISIONS) ACT § 3 (1991).

⁹ PLACES OF WORSHIP (SPECIAL PROVISIONS) ACT § 5 (1991).

¹⁰ Ind. Const. 105 § 32.

¹¹ Ind. Const. 105 § 226.

¹² Keshavnanda Bharti

¹³ Ind. Const. 105 § 13(3).

¹⁴ T. Venkata Reddy v. State of Andhra Pradesh (1985) 3 SCC 198.

was existing on 15th august, 1947. This provision is per se violative of article 13(3) and 32 of the Indian constitutions and further infringes the basic structure of the constitution.

By preventing judicial review, which is a fundamental element of the Constitution, the Centre has exceeded the scope of its legislative authority. The Supreme Court has reaffirmed that judicial review is a remedy that cannot be eliminated.¹⁵ Furthermore, the centre cannot make laws relating to the places of worship and pilgrimages as it is a part of the state list (entry 7, list II, schedule-7).

The act is also violative of articles 14¹⁶ and 15¹⁷ of the constitution. Under article 14, every person is guaranteed equality before law and equal protection of law but, a classification among persons is permissible if it is reasonable.¹⁸ A reasonable classification of people is allowed, but for a classification to be considered acceptable, two requirements must be met: first, the classification must be based on an intelligible difference that separates the people or things that are grouped together from those that are left out, and second, that difference must be rationally related to the goal of the relevant statute.

The present act restricts Hindus and people of other religion to approach the court which is pretty irrational, as it doesn't pose any restriction on the Ram Janam Bhumi dispute. Moreover, the concept of justice and rule of law (which is the core of art.14) has also been violated as the maxim of *ubi jus ibi remedium* has been frustrated.

The act is also violative of article 25¹⁹ and 26²⁰ as it violates the right to pray practice prorogate religion and also managing the places of worship-pilgrimage. The basic concept of Hindu law has also been violated by sections 2, 3, and 4 of the act as, under Hindu law it's believed that that the idol represents the ultimate being and its existence is never lost and neither can the deity be devastated from its property. In the Ram janam Bhumi case, it has been further held that the deity property remains to be deity property, and deity is also considered as a judicial person therefor, no other person can have its possession.

The act also deprives Hindus, Jains, Buddhists and Sikhs the right to protect their cultural heritage thus, violating their fundamental right under article 29²¹.

The Centre does not have the statutory authority to establish a retrospective cut-off date of 15.8.1947. Because it is a historical fact that in 1192, the invader Mohammad Gori established Islamic Rule after defeating Prithviraj Chauhan, and foreign rule continued up to 15.8.1947, any cutoff date could be the date on which India was conquered by Gori, and the religious places of Hindus, Jains, Buddhists, and Sikhs as they were existing in 1992 have to be restored with the same glory to provide them with solace and the opportunity to resume their places of worship and pilgrimage.

¹⁵ . *Minerva Mills Ltd. v. Union of India* MANU/SC/0075/1980; *Indira Nehru Ghandi v. Raj Narayan & ors.* MANU/SC/0304/1975; *Kihota Holohon v. Zachilhu & Ors.* MANU/SC/0713/1991; *M. Ismail Farooqui Vs Union of India* MANU/SC/0860/1994 *Union of India v. L Chandra Kumar* MANU/SC/0261/1997 *I.R. Coelho. (Dead) By L.R.s Vs State of Tamil Nadu & Ors.* MANU/SC/0595/2007.

¹⁶ Ind. Const. 105 § 14.

¹⁷ Ind. Const. 105 § 15.

¹⁸ *State of Gujrat v. shri ambica mills.*

¹⁹ Ind. Const. 105 § 25.

²⁰ Ind. Const. 105 § 26.

²¹ Ind. Const. 105 § 29.

THE ANCIENT MONUMENTS AND ARCHAEOLOGICAL SITES AND REMAINS ACT, 1958²²

Hindu religious experts have contested the legality of the Places of Worship Act, 1991 as well as the Act's relevance to the present Gyanvapi debate, claiming that the site is covered under the 1958 Ancient Monuments and Archaeological Sites and Remains Act.

The argument is not entirely without merit because it appears that the controversial location contains the ruins of Hindu temples and idols. If this is believed to be the case, it would be fascinating to watch how the parties and the court decide to approach the issue of the Places of Worship Act's application.

JUDGEMENT

Let's jump ahead to 2022. The claimants in the latest lawsuits appear to be upset over the temple's destruction in 1669. Numerous lawsuits have been filed asking for court rulings allowing Hindu worship in the mosque's vicinity and even calling for the mosque's destruction. Such requests, it goes without saying, are requests to modify the mosque's religious orientation. The Allahabad High Court is currently deliberating whether to rule on a late lawsuit asserting that the god Vishvanath owns the property on which the mosque is situated. It is astounding to observe the ongoing campaign against the mosque, with accusations of idols and their harm coming thick and fast, given that the whole goal of the 1991 law was to put an end to all such appeals and claims.

The current Vishvanath temple was established in 1777 by Rani Ahilyabai Holkar. The Uttar Pradesh Kashi Vishvanath Temple Act of 1983 grants legal recognition to this temple. The Supreme acknowledged that the original svayambhu jyotirlinga was carefully removed from the ancient construction and protected each time the temple was assaulted as part of sustaining the vires of this Act. Any follower of the Hindu religion would be loath to dispute that the "jyotirlinga," which is the god in the temple Ahilyabai erected, is officially recognised.²³

The Supreme Court ordered that the district court first rule on the Mosque committee's plea under Order 7 Rule 11 of the CPC, which claimed that the civil litigation was banned by a legislation of Parliament.

According to the top court, its earlier interim order from May 17 directing protection of the alleged location of the "Shivling" and permitting Muslims to perform "Namaz" inside mosque grounds

²² The Ancient Monuments and Archaeological Sites and Remains Act (1958)

²³ Shree Adi Vishveshvara of Kashi Vishwanath Temple, Varanasi & Ors. vs State of U.P. & Ors., MANU/SC/1164/1997

will continue to be in effect until the district judge decides whether the lawsuit is maintainable, and then for eight weeks to give harmed parties a chance to seek relief from the higher court.

