

ISSN :2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 6

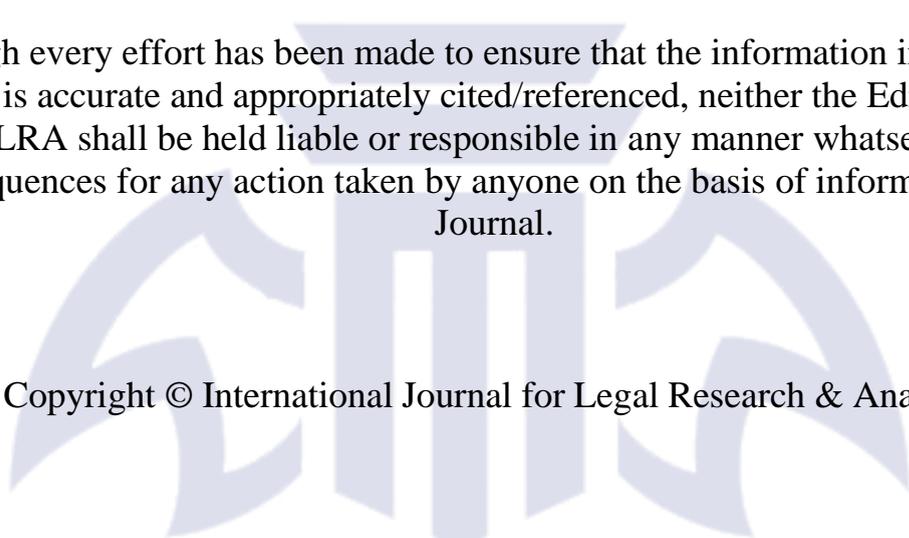
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GYANVAPI

(A Historical Case Study)

Authored By- 1. Anirudh Modi
2. Upasana Singh

“India has a great heritage and is a model for religious harmony where people of different religions live peacefully and in harmony.”

-Dalai Lama

Abstract

Kashi Vishwanath Temple is one of the twelve Jyotirlinga of Lord Shiva Shankara. Kashi Vishwanath was demolished many times and reconstructed, but the last assault was unrepairable. Just like Ayodhya, it is also a disputed site. Here Mughal Emperor Aurangzeb had created a dispute. He demolished Kashi Vishwanath Temple and built a mosque using the Temple's remains. He named the Mosque: *Gyanvapi Mosque*. Gyanvapi is a Sanskrit name which means "well of Knowledge." A new Temple was built just adjacent to the original Temple (current day mosque).

This research was done to find out a solution for this issue. In our research work, we dealt with the history of this Temple to its current status. We also dealt with the legal fight for land till now. What do Islamic Jurisprudence and Islamic Scholars say about the existence of a mosque at the disputed site? In research work, we also found that Places of Worship can be Challenged in a court of law. We have tried to present all the above concepts in a lucid way so as to present the related concept in an effective manner. During research work, we found legal issues and historical facts.

Keywords: Gyanvapi, Kashi Vishwanath temple, Islamic Jurisprudence

2. Objective Of This Research

India is the only place in the world where Temple can be found in every village, colony, city and town. It is being said that “ *Bhagwan Kaan Kaan me baste hai (God resides in every living and non-living thing).*” Love for nature and care for every creature is the basic principle that can be found in Indian Tradition. Indians considered their guest as God (*Atithi Devo Bhava*). There is no state religion in India because of the secular nature of our Constitution. Religions like Hindus, Muslims, Sikhs, Jain, Buddhists, Christianity etc. coexist peacefully. But some past incidence keeps on boiling since Independence onward. Because of historical wrongs, riots and communal tension happens between religions. The two prominent religions, Hindus and Muslims, fight for Temple and Mosque. Ayodhya's verdict dissolved the 134 years old legal fight.⁵ It is not just dissolved the legal fight but also maintained the balance between the two Religion by giving 5 acres of land for the construction of the Mosque⁶ and disputed Land to Hindus⁷. The current uprising of the Gyanvapi and Krishna Janmabhoomi Case again brought Hindus and Muslims into the arena of dispute and hatred. Demand for the reconstruction of the Temple and arguments supporting the Mosque is the boiling issue this summer season. Places of worship again came to light in the Indian Politics. Its legality is being questioned. Our objective is to find out whether these issues can be solved or not? We try to find out the middle path solution in Gyanvapi Case.

2. History Of Demolition And Reconstruction

Kashi or Varanasi or Banaras is located on the western bank of the holy river Ganga, one of the oldest living cities in the world. Kashi means "city of light" or "shining city." The city is said to be 10,000 years old⁸. Mark Twain, the English author and literature, remarks, "Banaras is older than history, older than tradition, older even than legend and looks twice as old as of them put together." Kashi is one of the pilgrimage spots of Sanatan Dharma. Many people visit Kashi to attend the excellent and auspicious Ganga Aarti daily. It is believed that those who die in this holy land will attend salvation and be free from the cycle of birth and death. Lord Shiva, one of the three Supreme deities of Hindus, himself settled or built this beautiful city. Varanasi is a centre of Knowledge, philosophy, culture, and Indian arts and crafts. Kashi Vishwanath Temple is dedicated to Lord Shiva and Goddess Parvati, one of the twelve Jyotirlingas of Lord Shiva located in the holy city of Varanasi. Vishwanath means "Lord of Universe." Lord Shiva is the main deity here, and devotees

⁵ [Ayodhya case: A brief history of India's longest-running property dispute - The Economic Times \(indiatimes.com\)](https://www.indiatimes.com/india/india-news/india-ayodhya-case-a-brief-history-of-india-s-longest-running-property-dispute-the-economic-times)

⁶ [Why 5-acre Land at UP's Dhannipur cut mosque plot in Ayodhya - Hindustan Times](https://www.hindustan-times.com/india/india-news/india-ayodhya-5-acre-land-at-up-s-dhannipur-cut-mosque-plot-in-ayodhya/)

⁷ [36350_2010_1_1502_18205_Judgement_09-Nov-2019.pdf \(sci.gov.in\)](https://www.sci.gov.in/36350_2010_1_1502_18205_Judgement_09-Nov-2019.pdf)

⁸ [Kashi: The oldest surviving city holds the essence of Religion and all possible paths \(msn.com\)](https://www.msn.com/india/india-news/india-kashi-the-oldest-surviving-city-holds-the-essence-of-religion-and-all-possible-paths/)

worship a Jyotirlinga. The original Temple was 2050 years old and built by Victorious Chakravarti Samrat Vikramaditya; Hindus claimed⁹.

The Temple was a centre for worship for crores of Sanatanis, but it was demolished by Islamic invaders four times. This Temple was first destroyed in 1194 AD by Slave dynasty ruler, Qutb-al-Din-Aibak¹⁰. But worship and rituals continued even after that. He not just destroyed a temple but also vanished a long old civilization. Gujarati Merchants did the rebuilding of the Temple in around 1230 AD during the reign of Delhi Sultan Iltutmish. Temple was destroyed a second time during the rule of either Hussain Shah Sharqi between 1447 and 58 or Sikandar Lodi between 1489 and 1517. Historians believe that Sikandar Lodi conducted the invasion of the Kashi Vishwanath temple. Again, the Temple was rebuilt by Raja Man Singh of Amer, and Raja Todar Mal renovated it in 1585. Both were part of *the "Navratnas"* of Mughal Emperor Akbar. The Mughal Emperor Shah Jahan made the third attack on Temple in 1642¹¹. He gave the Order to ruin, but local Hindus protested against this "*Farman.*" Shah Jahan destroyed small temples around the main temples. In the 17th century, the Raja of Orchha- Vir Singh Deo- an ally of Jahangir, refurbished the Temple. The last and final assault on the Temple was done by the Mughal Emperor Aurangzeb, a sheer hatred of Hindu culture and Tradition. He demolished the entire Temple, built a Mosque, and named it Gyanvapi Mosque.¹² Original Jyotirlinga was hidden into the well to protect it during the invasion. Local stories and priests claim that the prominent priest of the Temple jumped in the well with the lingam to protect the Jyotirlinga from invaders¹³. The remains of the Temple can be seen in the foundation and the western wall of the Mosque. They also left the Nandi Maharaj (beloved of Lord Shiva) as it is. In all the temples of Lord Shiva, Nandi Faces toward Lord Shiva, but here Nandi is facing toward the Gyanvapi mosque¹⁴.

⁹ [Decoding the Kashi Vishwanath-Gyanvapi dispute and why Varanasi court has ordered ASI survey \(the print. in\)](#)

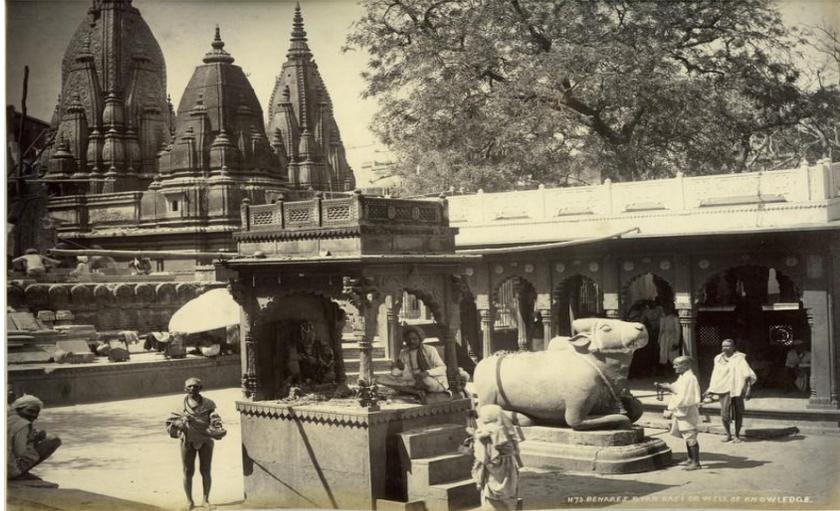
¹⁰ [Kashi through the ages: The millennia-old history of the divine city \(opindia.com\)](#)

¹¹ [Uttar Pradesh State PCS \(drishtias.com\)](#)

¹² [The Story of how Kashi Vishwanath Mandir was destroyed, restored and finally re-established \(tfipost.com\)](#)

¹³ [Fascinating Story of a head priest who hid Shivling in Gyanvapi well \(ground report. in\)](#)

¹⁴ [Nandi idol in Maharashtra temple falsely viral as idol facing Gyanvapi mosque - Alt News](#)



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The present Temple, which is standing, is not the original Temple. In the early 18th century, Raja Jai Singh-II of Amer, a governor during late Mughal rule, built a new temple near the destroyed Temple. The Maratha ruler "Malhar Rao Holkar" made a plan to demolish the Mosque and reconstruct Kashi Vishwanath Temple at the site in 1742. However, his plan didn't succeed because of the intervention by the Nawab of Awadh. Malhar Rao's Daughter-in-law "Ahilyabai Holkar" constructed the present Temple adjacent to the Mosque. Raja Ranjit Singh of Punjab was given one ton of gold to cover the domes of the Temple in 1835. That's why it is also called as Golden Temple. In the present era, a Kashi Vishwanath Dham corridor was inaugurated by Prime Minister of India Shree Narendra Modi on December 13, 2021. The project construction was announced on March 8, 2019, and its first phase completed¹⁶.



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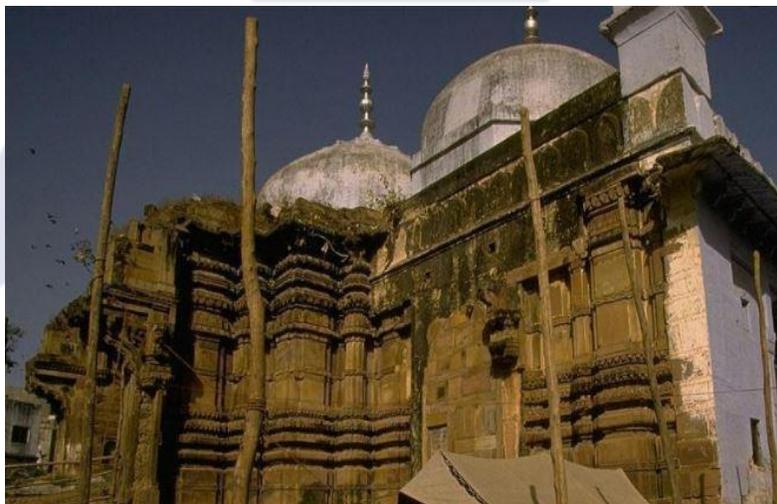
¹⁵ [gyanvapi \(columbia.edu\)](http://gyanvapi.columbia.edu)

¹⁶ [Kashi Vishwanath Corridor: What you need to know \(firstpost.com\)](https://www.firstpost.com)

¹⁷ [PM Modi inaugurates the first phase of Kashi Vishwanath Dham \(telanganatoday.com\)](https://www.telanganatoday.com)

4. Legal History And Claim For Land

The first legal case for the land claim was filed in 1936 by three Muslim petitioners. They wanted to get the entire Complex to be part of the Mosque. They produced eleven witnesses for their claim and fifteen from British Government as evidence. The court considered facts and evidence and gave the final Order on August 15, 1937. The court issued Muslims the right to offer Namaz and added that Namaz couldn't be offered anywhere else in the Complex¹⁸. The Hindu side filed a petition against the lower court order, but Allahabad High Court upheld the decision and dismissed the petition in 1942. After a long time of Independence, the ensuing legal fight for land ownership was started in October 1991. Hindu petitioners Pandit Somnath Vyas, Dr. Ramrang Sharma and others filed a case in the local court to reconstruct the Temple. Pandit Vyas claimed he was a descendent of Kashi Vishwanath Temple, so he would get land ownership and the right to worship. They argued in front of the court that "the Places of Worship Act, 1991" didn't apply in this case because the Mosque was allegedly built on the remains of the Temple, which can still be seen.



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The civil court ruled that the petition filed by the petitioner will not stand as it violates the Places of Worship Act, 1991. The court concluded the Judgement by citing the section- 4²⁰ of the act. A revision petition was filed before the District Court against the Judgement of the civil court in 1998. District Court ruled that the lower court can only hear the case after taking the evidence. In 1998, two petitions were filed against this Order by Anjuman Intezamia Masjid and UP Sunni Waqt Board Lucknow in the High Court. Allahabad HC stayed the proceeding till 2020. On March 7, 2000, Pandit Somnath Vyas (one of the claimants in 1991) died. After 20 years, Former District Advocated Vijay Shankar Rastogi was appointed as a litigant in this case. He Argued that Evidence

¹⁸ [LawBeat | Kashi Vishwanath-Gyanvapi dispute case\(s\)| Should Hindu's case take 30 years? : Adv. Rastogi before Allahabad High Court](#)

¹⁹ [An ASI Study of the Gyanvapi Mosque in Varanasi was ordered \(gaurilankeshnews.com\)](#)

²⁰ [Section 4 in The Places of Worship \(Special Provisions\) Act, 1991 \(indiankanon.org\)](#)

of historical account of Altekar and Chinese traveller Hiuen Tsang could be considered under the section 57(13)²¹ Of Indian Evidence Act, 1872, they talk about a temple which has 100 feet long Shiv Linga²². In 2020, the civil court said that the lower court could resume proceedings of Gyanvapi if a stay of HC order is not expressly extended after six months. The hearing started in the lower court. The Muslim side challenged this move, and HC reiterated the stay order in February 2020. On March 15, 2021, Allahabad HC reserved its Judgement on the Muslim's Petitions on the Maintainability of the suit. Again, the stay order continued. Civil Court of Varanasi gave Order to the Archaeological Survey of India (ASI) to conduct a Survey of the entire Gyanvapi Mosque on April 8, 2021²³. Sunni Central Waqf Board and Mosque committed went to High Court. On September 9, 2021, High Court stayed the Order and further proceeding in the lower court because High Court had already reserved the Judgement on March 15, 2021²⁴. On March 24, 2022, HC said to hear cases regularly till the conclusion on March 29²⁵. HC again adjourned the case till July²⁶.

5. Present Issue:- Case, Hearing, Order And Further Proceedings

As the civil court allowed for videography and sent a court commissioner for a survey. Ajay Kumar, a court commissioner, was appointed for the survey, but he was alleged to be biased toward Hindus. Court refused to remove him and continued the survey²⁷. Court also told the police to register FIR against those who will oppose the survey²⁸. The Mosque committee went to Supreme Court after HC rejected to hear the matter²⁹. Court gave May 16 as the last date for a survey and told us to submit the report on May 17. The court allowed to open and break any lock inside the Mosque premise. A survey was conducted and concluded on May 16³⁰. A video was leaked, and a

²¹ [Section 57 in The Indian Evidence Act, 1872 \(indiankanoon.org\)](http://indiankanoon.org)

²² [Gyanvapi Masjid case: Controversial history, timeline and long-drawn legal battle, read here | India News | Zee News](#)

²³ [Varanasi court directs ASI to survey Kashi Vishwanath temple-Gyanvapi mosque complex - Frontline \(thehindu.com\)](#)

²⁴ [Kashi Vishwanath Temple Varanasi: HC stays Varanasi court's Order for ASI survey of Kashi Vishwanath Temple-Gyanvapi complex | Allahabad News - Times of India \(indiatimes.com\)](#)

²⁵ [Allahabad HC orders normal hearing in Kashi Vishwanath temple-Gyanvapi mosque dispute case – ThePrint – PTI Feed](#)

²⁶ [6](#)

[Gyanvapi: Kvt-gyanvapi Mosque Case Hearing In Hc Adjourned Till July 6 | Allahabad News - Times of India \(indiatimes.com\)](#)

²⁷ [Gyanvapi mosque case: No change in commissioner, survey to be completed by May 17 | India News - Times of India \(indiatimes.com\)](#)

²⁸ [Concerned over the safety of my family, says judge handling Gyanvapi Masjid case | News24 \(news24online.com\)](#)

²⁹ [Supreme Court to hear the plea of Gyanvapi mosque committee against survey on Tuesday - The Economic Times \(indiatimes.com\)](#)

³⁰ [Gyanvapi mosque survey concludes on 3rd day; Hindu side claims 'conclusive evidence' \(republicworld.com\)](#)

Shivling-like structure was found in the ablution water tank (Wazu Khana³¹). The mosque caretaker said that it is not a Shivling but Fountain in the Wazu Khana³². The civil court took the matter and sealed the area, and prohibited the entry of non-Muslim³³. On May 17, the lower court removed the Ajay Kumar Mishra for leaking a video through a private channel and gave the other two advocate commissioners:- two more days to submit documents³⁴. On the same day, the Supreme Court bench headed by Justice D Y Chandrachud, Surya Kant and P.S. Narsimha gave interim Order on this matter³⁵.

SC on May 17:-

- Order area DM to protect the site where Shivling has been found without prohibiting Muslim right to enter and pray.
- No disturbance with Muslim right to pray or religious observance inside the Mosque.
- They should perform Namaaz.
- A lower judge ordered that only 20 people would be allowed for prayer. Now, it will not operate.
- Didn't pronounce for the stay on proceeding in a lower court about Gyanvapi Survey³⁶.
- The next hearing is on May 20.

On May 19 (Thursday), SC ordered Lower to halt the proceeding until the apex took up the case the next day. Justice P.S. Narasimha said, " this is the time when everyone should cooperate," speaking from the bench. Meanwhile, the advocate commissioner submitted 1,500 photographs and 10 hours of videography to the Lower Court.³⁷

SC verdict on May 20:-

- Apex court held that "ascertaining the religious character of a religious place is not barred under the Places of Worship Act,1991."
- Section :- 3³⁸ of the act don't bar ascertaining of religious place
- Hearing example:- Suppose there is Agiyari (a Parsi fire temple), and there is a cross in another segment of the Agiyari in the same Complex.

³¹ A Wuzu khana is where Muslims wash their hands and legs before offering namaaz.

³² [Gyanvapi petitioners say Shivling was found in a tank; mosque lawyer says it is a fountain \(scroll. in\)](#)

³³ [Gyanvapi Mosque: Secure Shivling Area But Don't Stop Namaz, Says Supreme Court \(ndtv.com\)](#)

³⁴ [Protect the area where 'Shivling' was found ordered Supreme Court of India; Court grants two more days to submit the report \(organiser.org\)](#)

³⁵ [Gyanvapi hearing: SC allows Namaz but protects Shivling site, next hearing on May 19 \(opindia.com\)](#)

³⁶ [Secure Shivling area in Gyanvapi mosque: SC \(vajiramias.com\)](#)

³⁷ [Gyanvapi case: Hindu side seeks video and photographs of survey report; Varanasi court order tomorrow \(timesnownews.com\)](#)

³⁸ [The Places of Worship \(Special Provisions\) Act, 1991 \(indiankanon.org\)](#)

Does the presence of Agiyari make the cross an Agiyari?

Does the presence of the cross make the Agiyari a place of Christian worship?

- This kind of hybrid Character is common in India.
- SC transferred the case from civil court to District Court. They want a more senior and experienced judge for this case.³⁹.
- Directed District Magistrate for the arrangement, if not made for Wazu Khana.
- SC directed first to hear the Masjid Committee plea.

District Court on May 24:-

- First, hear the Muslim plea as directed by SC on May 26 over the Maintainability of a suit filed by Hindu Plaintiff under Order 7 Rule 11 of Code of Civil Procedure.
- Directed both sides to file objections over the commission report over the video survey within seven days.

May 26 hearing in District Court:-

- The Muslim side presented their argument.
- Masjid Committee has argued that the suit is barred under the Place of Worship Act.
- Anjuman Intezamia Masjid Committee's lawyer Mohammad Tauhid Khan argued that the writ is not maintainable under Order seven and Rule 11 of the CPC (Civil Procedure Code); hence it should be dismissed.⁴⁰.
- They argued that *the leaked video*.⁴¹ which Hindus claimed as Shivling is a fountain which is part of Wazu Khana.

May 30 hearing:-

The Muslim side continued the argument over the Maintainability of the suit.⁴².

District judge Ajay Krishna Vishvesha posted the next hearing on July 4, and the Muslim side will continue the arguments on the Maintainability of the suit.⁴³.

6. Legality of Places of Worship Act, 1991?

Places of Worship Act, 1991⁴⁴ was enacted during the Ayodhya Dispute under Narasimha Rao's government. Its main objective is to stop legal proceedings of cases related to changes like the

³⁹ [Gyanvapi mosque row: Supreme Court transfers case to a district judge in Varanasi | India News | Zee News](#)

⁴⁰ [Gyanvapi Case: Today's hearing of the district judge is over; now what next \(jagranTV.com\)](#)

⁴¹ [Gyanvapi Masjid \(Mosque\) Inside Shivling Viral Footage Video Link Images Watch Online | Naija News Vibes](#)

⁴² [Gyanvapi case: Muslim side to continue ideas today \(odishatv.in\)](#)

⁴³ [Gyanvapi case: Court posts next hearing on July 4 | Varanasi News - Times of India \(indiatimes.com\)](#)

⁴⁴ [The Place of Worship\(Special Provisions\) Act, 1991 \(mha.gov.in\)](#)

religious place. This act came into force in July 1991.

- Section 4(1) of the act says that religious place will be maintained as it was on August 15, 1947.

The places of Worship Act excluded the Babari Masjid dispute from its ambit because the matter was before the Independence.

- Section 4(2) says that A proceeding claiming the conversion of a religious place took place after August 15, 1947, should be disposed of in the same manner as section 4(1) by ensuring the Character of the religious site as it existed on August 15, 1947.
- The conversion of a religious place in any matter is prohibited under section:- 3 of the act.

SC on places of worship Act, 1991 on May 20:-

- Section:- 3 doesn't bar from ascertaining the religious Character of the place of worship- SC observed.
- The presence of the cross will not make an article of Christian faith into an article of the Zoroastrian faith. Nor does an article of Zoroastrian faith make it a structure of Christian faith.
- It is not written in the act of 1991 that the court can't ascertain a Places of Worship of different Religion.⁴⁵.



A videography survey conducted by a civil court is not a violation of the 1991 act. This act can be declared null and void if the apex court wants. This act violates the fundamental rights of article

⁴⁵ [Ascertaining of religious Character of the place of worship is not barred under 1991 law: SC: The Tribune India.](#)

25⁴⁶ and 26⁴⁷ of Hindus. Hindus have been praying there for thousands of years without any stoppage. This act will not apply in this case because the Temple was partially demolished, and its remains can also be seen now.

7. Existence of Gyanvapi Mosque in the context of Islamic Jurisprudence

Every Religion has a place where people of Religion go and pray. Like Sikhs go to Gurudwara to offer prayers, Hindus go to Temple...

Mosque in Islamic Jurisprudence:-

- A person of Muslim faith outlined in the Holy Quran does not permit the construction of a mosque on the site of a temple after demolishing the Temple.
- Aurangzeb never dedicated the Mosque to almighty Allah. It was just a showcase of power over the other.
- A mosque must be constructed in peace and near a site where Muslims have a larger population.
- According to the Tenets of Islam, they say that a mosque can't be built where the Temple surrounds it.

In this case, Gyanvapi is surrounded by temples. Everyday Temple creates Bhajan and kirtan, music, and the sound of Conch shells or Ghanta Ghariyalis, which always disturb the peace of the Mosque.

- A mosque can't stand on other religious foundations, but the Gyanvapi mosque stands on the remains of the Temple.

Mohammad Idris (PW -10)

- A building built on someone's land is not a mosque under Islam. So, there is no question of legality or illegality of land.
- Demolishing any Place of Worship is prohibited in Islam.
- A mosque can be built on the debris of another religion after buying that debris. But a mosque can't be made by forcibly grabbing debris of structure.

Mohd Khalid Nadvi (PW-22)

⁴⁶ [Article 25 in The Constitution Of India 1949 \(indiankanoon.org\)](http://indiankanoon.org)

⁴⁷ [Article 26 in The Constitution Of India 1949 \(indiankanoon.org\)](http://indiankanoon.org)

- Indeed, a mosque can't be constructed by forcibly demolishing a temple; similarly, a mosque can't be built by forcibly acquiring a place of worship⁴⁸.

Under the Islamic Jurisprudence, Gyanvapi Mosque is against Islam, and it is also against the principles of Islam.

In an SC case, it was held that Mosque is not an essential part of Islam to perform Namaaz. Muslims can offer Namaaz anywhere, in open places as well.⁴⁹

8. Conclusion

There is a long history in which Hindus have been persecuted in their own land for 800 years⁵⁰. During the Islamic invasion, their temples were destroyed, women got raped, and men were treated as enslaved people. Sikhs lost their Gurus. In the research work, we found that Gyanvapi Mosque is Un-Islamic. Islamic jurisprudence, Islamic scholars said that a mosque couldn't exist at the disputed site. We also found that the Mosque committee doesn't have documents for the land to prove the ownership.⁵¹. During our research, we found that Places of worship can be challenged in court because it is against the fundamental right of the Indian Constitution. Our research work (based on apex court judgement) also found that ascertaining a religious place is not violating the 1991 act. Apart from all these, the Gyanvapi mosque and Kashi Vishwanath temple can be seen as a symbol of the peaceful existence of two religions which promote brotherhood and unity.

⁴⁸ [36350_2010_1_1502_18205_Judgement_09-Nov-2019.pdf \(sci.gov.in\)](#), page no. 106 to 109

⁴⁹ M Ismail Faruqi v. Union of India

⁵⁰ [Muslim Persecution of Hindus In India – Sanskriti - Hinduism and Indian Culture Website \(sanskritimagazine.com\)](#)

⁵¹ [Who owns the Gyanvapi mosque land? | India News - Times of India \(indiatimes.com\)](#)