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THE ESSENTIALITY OF MOSQUES

Relevant for: Indian Polity & Constitution | Topic: Judiciary: Structure, Organisation & Functioning

The importance of mosques in Islam has come into focus again. During the hearing of the Babri Masjid case, advocate Rajeev Dhavan asked the Supreme Court to reconsider its judgment in *Ismail Faruqui v. Union Of India* (1994). The Bench in that case had ruled by a majority that a mosque is not essential to Islam, and allowed the Central government to include the 2.77 acres (on which the Babri Masjid once stood) in the 67.7 acres of land to be acquired under the Acquisition of Certain Area at Ayodhya (ACAA) Act, 1993.

Among the court's arguments to justify the acquisition of Babri Masjid land was that "a mosque is not an essential part of the practice of... Islam and Namaz (prayer) by Muslims can be offered anywhere, even in open." This conclusion was reached on the belief that "under the Mahomedan Law applicable in India, title to a mosque can be lost by adverse possession". As proof, the judges cited Section 217 from Mulla's Principles of Mahomedan Law.

But no such provision exists in Muslim law. Mulla was only citing the view of the Privy Council in *Masjid Shahid Ganj Mosque v. Shiromani Gurdwara Parbandhak* (1940), a reading of which shows that it was not 'Mahomedan law' but the Indian Limitation Act of 1908 that was invoked to rule that property made waqf for the purposes of a mosque cannot be exempted from the law of adverse possession.

In other words, the *Faruqui* judgment did not give any evidence from Islamic scriptures to justify its declaration that mosques are not essential to Islam. It thus ignored the "essential practices doctrine" laid down in the landmark *The Commissioner*, *Hindu Religious Endowments, Madras v*. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (1954), according to which "what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself." This view was elaborated further by the Supreme Court in *Srimad Perarulala Ethiraja Ramanuja Jeeyar Swami v. The State of Tamil Nadu* (1972) to accommodate "practices which are regarded by the community as a part of its religion."

A reading of the Koran and authentic traditions of the Prophet make clear the significance of the mosque in Islam. In fact, the first act of the Prophet after migrating to Medina was to establish a mosque. The Prophet had demonstrated by example that mosques went beyond the ritualism of 'worship'. They were spiritual, humanitarian and educational centres open to all people irrespective of their social, financial or racial status, or gender, thus emphasising the importance of equality for social progress. The Koran protects this higher purpose from being compromised by listing the qualities of people who are allowed to maintain mosques.

The mosque is so indispensable to Islam that the two most authentic books of *hadees,* Sahih Bukhari and Sahih Muslim, quote the Prophet as stating: "Prayer in congregation [inside a mosque] is 27 times more meritorious than prayer performed individually." The significance of this pronouncement can be gauged from another *hadees* in Sahih Muslim wherein it is recorded that even a blind man was refused Prophetic permission to pray at home and was asked to join the congregation. This, in essence, is the doctrine of Islam on the essentiality of mosques which, by virtue of being a time-honoured belief, is protected as a fundamental right under Articles 25 and 26 of the Constitution. A judicial negation of this doctrine would actually amount to a negation of the right of Muslims to pray in a mosque guaranteed in these Articles. It could also have a profound bearing on the sanctity of all mosques in India.

One fails to understand why the court ventured into theological territory when it could have justified the acquisition of the Babri Masjid land on the strength of the law of limitation alone. The irony is that the apex court thinks Muslims can offer namaz in the open, but when they do, they are prevented by right-wing outfits, as was reported in Gurugram in Haryana in May. Another negative impact of the ruling that namaz can be offered anywhere, which was one of the arguments used to uphold the ACAA Act, is that it denied Muslims, through Section 7 of the Act, the right to pray in the disputed area while placing no such restriction on Hindus.

In the minority judgment, which struck down the entire ACAA Act as unconstitutional, Justices S.P. Bharucha and A.M. Ahmadi flagged Section 7(2) and noted that it "perpetuates the performance of puja on the disputed site. No account is taken of the fact that the structure thereon had been destroyed in a most reprehensible act. The perpetrators of this deed struck not only against a place of worship but at the principles of secularism, democracy and the rule of law..." The judges also said that Article 15 of the Constitution debars the state from discriminating against any citizen on the ground of religion, among other things.

These facts, coupled with the lack of scriptural evidence to prove that the mosque is not an essential part of Islam, lay the groundwork for the Supreme Court to reconsider the *Ismail Faruqui* verdict at the earliest.

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