

POLICY BRIEF, MAY 2024

Destruction of Religious Sites in India: A Legal Overview

MAHAM NAWEED

Executive Summary

Issue

The destruction of religious sites in India is a complex and deeply troubling issue. It stems from various factors such as religious intolerance, political agendas, communal tensions and acts of terrorism. These demolitions of religious sites, raise serious questions about violations of international law on freedom of religion and international human rights principles, by India. The explicit violations also stem from Indian being a part of multiple human rights treaties.

Recommendations

- Pakistan should highlight India's violation of international law related to freedom of religion and worship before the international community. This should be done with the aim of creating awareness about Indian transgressions so that the international community is aware of the situation of religious minorities in India. This can be achieved by holding events in cities that house debates on international law issues such as New York, Geneva and Vienna, in addition using other platforms for highlighting the issue.
- Pakistan can approach the designated bodies of the United Nations, such as the Human Rights Council and other human rights committees to bring the Indian atrocities to their attention. If possible, Pakistan can use the complaint mechanism provided in the human rights treaties to officially put the matter before United Nations committees, such as the Committee on the Elimination of all Forms of Racial Discrimination.
- Pakistan should raise awareness on Islamophobia amongst all muslim majority countries so that a coordinated effort by the muslim countries is prepared. Pakistan has already taken the first step by tabling a resolution at the United Nations General Assembly that concluded with 15 March being designated as the International Day to Combat Islamophobia.

I) Overview

India has a diverse religious landscape with several major religions being practiced across the country. The majority of the Indian population practices Hinduism, which is also the populist religion in the country. However, in addition to Hindus, India is also home to Muslims, Christians, Sikhs, Budhists, Jains and a small proportion of other religions. Such religious diversity warrants peaceful coexistence among the entire population and also protection of the right to freedom of speech, expression and religion by the state.

The situation in India is far from ideal. India has been under the international spotlight for acts of religious intolerance and hate crimes based on religion. India has witnessed incidents of communal violence, particularly between religious communities, leading to a loss of life and property. These incidents often stem from religious tensions, political polarization and socio-economic factors. These crimes can take various forms, including violence, harassment, discrimination and intimidation. The issue is further magnified by the State's refusal or inability to prosecute those responsible for perpetuating such violence with impunity and in some cases, the violence is also sponsored by the Indian State.

II) Destruction of Religious Sites in India

The destruction of mosques in India is a deeply concerning trend, casting a long shadow over the country's commitment to religious freedom and cultural preservation. This issue is not a recent development, but rather a recurring theme with roots stretching back decades. Recent events, such as the demolition of the centuries-old Shahi Masjid in Allahabad and the Akhunji Masjid in Delhi, have reignited anxieties and sparked debates about the legality and motivations behind these actions.

Additionally, the demolition of the Babri Masjid in 1992 and the subsequent construction of the Ram Mandir on the disputed site has posed to be an issue of contention. In a landmark verdict in 2019, the Supreme Court of India acknowledged

the demolition as an illegal act. This seemingly clear-cut judgment was followed by a more complex ruling. Despite recognizing the mosque's destruction as unlawful, the court awarded the very land where the Babri Masjid stood to a Hindu trust for the construction of a Ram temple.

Further fueling these concerns is the appointment of the very Chief Justice, who led the bench delivering the controversial verdict, to a nominated seat in parliament, just four months after his retirement. This action raises serious questions about the potential influence of the ruling BJP-RSS party on the judicial process, aimed at advancing their Hindutva agenda.

III) Hindu Nationalist Activists and Mosque Demolitions

The Hindu nationalist movement, supported by the federal government led by Narendra Modi, has been launching successive campaigns aimed at destroying mosques designated for the Muslim minority in India. Their argument rests on the assertion that these structures were originally Hindu temples, which were purportedly destroyed by medieval Muslim rulers, and therefore they believe they should have the right to worship at these sites.

Rajneesh Singh, a prominent figure within BJP, lodged a petition in the Allahabad High Court of Uttar Pradesh, a northern state governed by BJP's Yogi Adityanath. Singh's petition contended that the Taj Mahal was formerly a Hindu temple known as "Tejo Mahalaya", and he urged for the reopening of certain closed entrances to the monument. It is pertinent to note that Taj Mahal is a UNESCO world heritage site and its destruction would violate India's obligations under the UNESCO World Heritage Convention in addition to multiple human rights instruments.

In 2022, activists from Hindu nationalist groups assembled near the Qutub Minar to conduct Hindu rituals on its grounds, labeling the monument as "Vishnu Stambh" in connection with a Hindu temple.

Importantly, further targets of the Hindu nationalist agenda include the Shahi Eidgah mosque in Mathura, the Teelewali mosque in Lucknow, the Jama Masjid in

Bhopal, the Malali mosque in Karnataka and the Srirangapatna mosque in southern India.

III) International Law on the Protection of Religious Sites and Monuments

The recent past has seen progressive developments in international law on the law of freedom of religion. The protection of religious places of worship is seen as a subset and reinforcer to the fundamental right of freedom of expression and freedom of religion.

Access to Places of Worship as a Manifestation of Right of Freedom of Religion

One of the main manifestations of the fundamental right of freedom of religion is the establishment of and free access to places of worship and cemeteries. This freedom includes public and private worship, both individually and collectively.

International law has reaffirmed these principles in various texts such as Article 18 of the Universal Declaration of Human Rights, 1948 and Article 18 of the International Covenant on Civil and Political Rights, 1966. Furthermore, international texts such as, the “EU Guidelines on the promotion and protection of freedom of religion or belief, of 24 June 2013”, specifically indicate that one of the manifestations of the right to freedom of religion is carrying out worship, holding meetings related to religion or beliefs and, in addition, establishing and maintaining places for those purposes. There are also appeals to the need to freely access places of worship. The European Union specifically warns that one of the main constraints to the fundamental right of freedom of religion that States sometimes engage in is to hinder access to places of worship or meeting for religious reasons.

IV) Violations of International Law by India

In light of the developing jurisprudence in international law, the demolitions and destruction of religious sites in India, raise serious questions about violations of international law on freedom of religion and international human rights principles. Furthermore, there are some international laws that India is in blatant violation of, by virtue of being signatory to certain international conventions and declarations.

a) Declarations & Resolutions

Declarations are not legally binding but carry considerable moral force and serve as a clear indication of the commitments made by the international community. Declarations often originate from resolutions adopted by the United Nations General Assembly. Some declarations later become conventions. Most declarations and resolutions also form part of customary international law which is binding on all states that are party to the United Nations, regardless of a treaty mechanism being in place.

Universal Declaration of Human Rights, 1948

The Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948, was a breakthrough in establishing formal worldwide recognition of religious and other freedoms. In a key provision, UDHR Article 18 declares:

“Everyone has the right to freedom of thought, conscience and religion; this right includes the right to change his religion or belief, and freedom, either alone or in community with others in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

India is a signatory to the UDHR. That means that India has taken upon itself to ensure that the fundamental rights contained in the human rights instrument are upheld and protected in India. The destruction of mosques in India, whether by private individuals or the state, puts India in violation of the UDHR.

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981

The United Nations General Assembly adopted on 25 November 1981, without a vote, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981 Declaration). This Declaration is hailed by international lawyers and diplomats as a major landmark in the promotion and protection of human rights related to religious freedoms. Article 6 of the 1981 Declaration, emphasizes the importance of places of worship by stating:

“[...] the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms:

(a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes; [...]

(e) To teach a religion or belief in places suitable for these purposes;”

The presence of this declaration shows the importance accorded by the United Nations and the international community to the protection and observance of the right to freedom of religion.

The destruction of religious sites in India is in direct violation of the rights upheld and reinforced in this declaration.

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992

This declaration was adopted by the General Assembly in 1992 and provides for the right of minorities to practice their own religion and maintain contact with related groups everywhere. It also requires States to take steps to “*encourage conditions for the promotion*” of the “*identity*” of minorities within the state’s territory.

Religious sites and places of worship are part of the identity of people practicing a particular religion. The destruction of places of worship, which also serves as a place for religious followers to gather for the promotion of a religion, violates the right of freedom of religion and association. Furthermore, this right is particularly protect for persons belonging to the minorities such as the Muslims in India.

Human Rights Council Resolution 6/37, Elimination of all forms of intolerance and of discrimination based on religion or belief

Resolution 6/37 was passed by the United Nations Human Rights Council in 2007 and focuses on what constitutes intolerance and discrimination based on religion, focusing particularly on places of worship. The resolution reads as follows:

“9 (e): The Human Rights Council urges States, "To exert the utmost efforts, in accordance with their national legislation and in conformity with international human rights and humanitarian law, to ensure that religious places, sites, shrines and symbols are fully respected and protected and to take additional measures in cases where they are vulnerable to desecration or destruction;".

9 (g): The Human Rights Council urges States, "To ensure, in particular, the right of all persons to worship or assemble in connection with a religion or belief and to establish and maintain places for these purposes [...]"

It is important to note that India voted in favor of this resolution but has failed to uphold the law and ideals contained in the document. Failing to protect the sanctity of places of worship goes against India's own commitment to the international community to eliminate intolerance based on religion.

b) Treaties and Conventions

A treaty is a formal, legally binding written contract between actors in international law. It is usually made by and between sovereign states, but can include international organizations, individuals, business entities, and other legal persons.

International Covenant on Civil and Political Rights, 1966

The International Covenant on Civil and Political Rights (ICCPR), was adopted by the United Nations General Assembly on 19 December 1966. It is a multilateral treaty that commits nations to respect the civil and political rights of individuals. Freedom of religion is contained in Article 18 of the ICCPR, which reads as follows:

“This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”

As a signatory to the ICCPR, India is committed to upholding freedom of religion, which includes the freedom of assembly in places of worship. The destruction of mosques, particularly without due process, is a violation of this crucial right.

Indigenous and Tribal Populations Convention, 1957 (No. 107)

Indigenous and Tribal Populations Convention, 1957 (No. 107) of the International Labour Organization (ILO) is an international instrument adopted to protect Indigenous populations from oppression and discrimination. This Convention declares that signatories must take steps to protect their indigenous populations while taking due account of their cultural and religious values. Article 4 of Convention (No. 107) states that:

“In applying the provisions of this Convention relating to the integration of the populations concerned–

(a) due account shall be taken of the cultural and religious values and of the forms of social control existing among these populations, and of the nature of the problems which face them both as groups and as individuals when they undergo social and economic change;”

India is a signatory to Convention (No. 107). As a signatory, India is under an obligation to protect the religious freedom of all of its populations including the socially and politically underrepresented population. The destruction of religious sites in India, especially of the minority population, constitutes a breach of this ILO Convention.

IV) Indian Domestic Law

India's domestic law also lends support to protecting the freedom of religion of Indian citizens and so the destruction of religious sites in India is a violation of India's own law as well.

Constitution of India

The Constitution of India is the cornerstone of the country's legal system. It enshrines principles of equality before the law (Article 14) and freedom of religion (Article 25). Articles 14 and 25 respectively ensure equality before the law and the right to practice religion. The destruction of religious sites violates these principles as it disproportionately targets Muslim communities and hinders their ability to practice their faith freely.

Places of Worship (Special Provisions) Act, 1991

The Places of Worship Act, 1991 of India, prohibits the forced conversion of religious sites. Demolishing a mosque without a valid reason is a violation of this Act. Section 3 explicitly states that

"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 of a different religious denomination or any section thereof."

The justifications provided for mosque demolitions often raise eyebrows. Authorities frequently cite reasons like urban renewal projects or the presence of "illegal" structures. Critics argue that these justifications are used selectively, targeting mosques disproportionately compared to other religious structures. This lack of transparency fuels concerns about discriminatory motives and undermines the principles of equal treatment under the law.

Indian Penal Code, 1860

The Indian Penal Code, 1860 contains various provisions to address offences relating to religion. Section 295 states that,

“Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punishable with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

Section 295 also provides for punishment of a person who, with the deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or visible representation or otherwise, insults or attempts to insult the religion or religious beliefs of that class.

Indian authorities are in blatant violation of the explicit prohibition of the destruction of places of worship contained in Indian law itself.

V) Recommendations

The Indian government needs to be held accountable on two accounts. The first is the destruction of religious sites and the second is for its failure to protect religious places of worship. Pakistan has the following options available to it:

1. Pakistan should highlight India’s violation of international law related to freedom of religion and worship before the international community. This should be done with the aim of creating awareness about Indian transgressions so that the international community is aware of the situation of religious minorities in India. This can be achieved by holding events in cities that host debates on international law issues such as New York, Geneva and Vienna.
2. Pakistan can approach the designated bodies of the United Nations, such as the Human Rights Council and other human rights committees to bring the Indian atrocities to their attention and hold India accountable. If possible,

Pakistan can use the complaint mechanism provided in the human rights treaties to officially put the matter before United Nations committees, such as the Committee on the Elimination of all Forms of Racial Discrimination.

3. Pakistan should raise awareness on Islamophobia amongst all muslim majority countries so that a coordinated effort by the muslim countries is prepared. Pakistan has already taken the first step by tabling a resolution at the United Nations General Assembly that concluded with 15 March being designated as the International Day to Combat Islamophobia.

Action Matrix

Recommendations	Pathways to Solution	Implementation of Solution	Actors Responsible	Implementation Timelines
Highlight India's violation of international law related to freedom of religion and worship before the international community	The government should create a focus group of relevant government ministries	The focus group created by the government should create a holistic narrative building strategy to highlight India's violation of international law	<ol style="list-style-type: none"> 1. Federal Ministry of Foreign Affairs 2. Federal Ministries of Law and Justice 3. Federal Ministry of Religious Affairs and Interfaith Harmony 4. Federal Ministry of Human Rights 	<p>1-2 Months for Creation of Focus Group</p> <p>4-6 Months for Focus Group Deliberations</p> <p>6-12 Months for Implementation of Strategy</p>
Approach designated bodies of the United Nations, such as the Human Rights Council and other human rights committees to bring the Indian atrocities to their attention	Identify the appropriate bodies of the United Nations and their complaint mechanisms	Create strategies to approach each UN body and identify the required documentation	<ol style="list-style-type: none"> 1. Federal Ministry of Foreign Affairs 2. Federal Ministries of Law and Justice 3. Federal Ministry of Religious Affairs and Interfaith Harmony 4. Federal Ministry of Human Rights 	<p>1-2 Months for Identification and Research on relevant UN Bodies</p> <p>2-4 Months for deliberations and creation of documentation to file complaint</p>
Raise awareness on Islamophobia amongst muslim majority countries so that a coordinated effort by the muslim countries is prepared	Identify possible countries for engagement on the issue including those that have already expressed concerns regarding the matter	Reach out to countries through multiple diplomatic means and discuss possible ways to combat Islamophobia as a coordinated response	<ol style="list-style-type: none"> 1. Federal Ministry of Foreign Affairs 2. Federal Ministries of Law and Justice 	<p>1 Month to identify countries for engagement</p> <p>2-3 Months to engage with countries</p> <p>1-2 Years to implement coordinated response</p>