

Joint Response to the Public Notice issued by Hon'ble Chief Architect, NDMC in respect of Sunehri Bagh Masjid, New Delhi submitted on Dec 30, 2023 by Shyam Sunder Singh, Nagesh C. Rana, Surjit Singh Lamba, Rev Fr Dr Packiam Samuel, Prof S. A. M. Naqvi and Dr Syed Zafar Mahmood, CISRS House, 14 Jangpura B, New Delhi 110014:

1. Following submissions are made in response to the public notice issued by the Hon'ble Chief Architect, NDMC, New Delhi in respect of Sunehri Bagh Masjid:

Masjid is neither 'Obstruction' nor 'Projection': Invoking Sec 11(p) of NDMC Act is an illegality

2. The NDMC notice in respect of the proposed removal of the captioned heritage building relies upon section 11 of NDMC Act clause (n) and (p). These read as follows:

"11. Obligatory functions of the Council: Subject to the provisions of this Act and any other law for the time being in force, it shall be incumbent on the Council to make adequate provisions by any means or measures which it may lawfully use or take, for each of the following matters, namely:

(n) the construction, maintenance, alteration and improvements of public streets, bridges, culverts, causeways and the like;

(p) the removal of obstructions and projections in or upon streets, bridges and other public places."

3. Sunehri Bagh Masjid is neither covered by 'Obstruction' nor 'Projection' in or upon a street. The Britishers decided in 1911 to shift India's national capital from Kolkata to the area on and around Raisina Hill in Delhi (Britannica <https://www.britannica.com/place/Delhi/Cultural-life>). But Sunehri Bagh Masjid is in existence since much before that. Hence the masjid can never be an 'obstruction' nor 'projection' in or upon a street which was laid much after the Masjid came into being.

4. As per Oxford Dictionary 'obstruction' means the fact of blocking a road, an entrance, a passage, etc. Cambridge Dictionary says 'Obstruction' is something that blocks a road, passage, entrance, etc. so that nothing can go along it. So, for the concept of 'Obstruction' being applicable an existing road, passage, entrance etc is a pre-requisite. But, at the time of construction of Sunehri Bagh Masjid no such road, passage or entrance existed. Hence the provision relating to 'Obstruction' is not applicable in this case.

5. Similarly, as per Oxford Dictionary, 'Projection' is something that sticks out from a surface. Cambridge Dictionary says that 'Projection' is something that projects from a surface. So for the concept of a 'Projection' being applicable an existing surface is a pre-requisite. In the instant case, that surface could be only an existing road. But when Sunehri Bagh Masjid was constructed there was no existing road. Hence the provision relating to 'Projection' is also not applicable in this case.

6. Hence, invoking section 11 (p) of NDMC Act in this matter is an illegality.

Ancient Mosque of Delhi statutorily notified as Heritage

7. In exercise of the powers conferred by Bye-laws 23.1 and 23.5 of Delhi Building Bye-laws, 1983 read with sub-section (17) of Section 2 of the New Delhi Municipal Council Act 1994, vide

Order F. No. 4/2/2009/UD/ 6565 dated October 01, 2009 the Lt. Governor of Delhi notified 141 heritage sites including the Sunehri Bagh Masjid as a Heritage Site Grade III.

8. As per the book Dilli ki Tarikhi Masaajid (Historical Mosques of Delhi) authored by Ataur Rahman Qasmi published in 1998 by Maulana Azad Academy, New Delhi, page 129, "Masjid Sunehri Bagh is made of limestone and exists since the reign of Feroz Shah Tughlaq".

9. Vide Gazette notification no. 166/1969 of Delhi Administration published on April 16, 1970, Sunehri Bagh Masjid was gazetted as Waqf property no. 18 as on October 01, 1962 that is the date of commencement of Waqf Act 1954 [sub-section (2) of section 5].

Model Heritage Regulations

10. As per Model Heritage Regulations, Town and Country Planning Organization, Ministry of Urban Development, Govt of India 2011, Heritage Grade-III comprises buildings and precincts of importance for townscape that evoke architectural, aesthetic or sociological interest. These can be representative of lifestyle of a particular community or region and may also be distinguished by setting, character, façade. Heritage Grade-III buildings and sites deserve intelligent conservation and special protection to unique features and attributes.

Netaji Canopy near India Gate

11. Proceeding on the same lines, protecting the heritage nature of Netaji Canopy near India Gate, after the volume of traffic went up, the inner circle was closed to traffic, instead of even remotely thinking that the canopy should be taken out.

Delhi Metro Corpn. had amended the route protecting the Masjid

12. Also, keeping this legality in mind, more than a decade ago, when the Metro railway line was being laid then the Delhi Metro Corporation had changed the proposed route of Udyog Bhawan Metro Station so that the Sunehri Bagh Masjid does not get adversely affected.

Open Air Space still existing around Masjid

13. It is also important to note that between the main building of Masjid Sunehri Bagh and the beginning of the road on any side around it there is an existing sufficient open air space where there is no building constructed. Also, on the other side of the road (junction of Motilal Nehru Marg and Sunehri Bagh Road) there are public toilets which can be shifted elsewhere to widen the road.

Udyog Bhawan Metro AC Plant also in same roundabout

14. The Udyog Bhawan Metro AC Plant is constructed on Waqf land belonging to Masjid Sunehri Bagh in the same roundabout which houses this Masjid. In case, even though theoretically (without prejudice to the running theme of this submission), it is presumed that the Masjid impedes the traffic, then Udyog Bhawan Metro AC Plant also equally impedes the traffic attracting the impugned provisions of NDMC Act.

Constitutional validity of NDMC / Delhi Traffic Police proposal vis-a-vis other similar structures on nearby roundabouts

15. In the public notice, NDMC said, “The civic body had received reference from the Delhi Traffic Police regarding a traffic engineering proposal for sustainable mobility in the vicinity of the roundabout of Sunehri Bagh. After that, NDMC applied to the Heritage Conservation Committee to remove Sunehri Masjid under Annexure II, Clause 1.16 of the Unified Building Bye Laws 2016.”

16. Just like the Sunehri Bagh Roundabout, among the dozens of roundabouts in the enveloping road network, there are other similar structures too that would be ‘bothering’ the Delhi traffic police department. In fact elsewhere in Delhi there are so many structures (mostly non-heritage) which are actually obstructions / projections in respect of which the traffic police / local body has not been issuing any such notice. The NDMC needs to collect all such information and bring it in the public domain including to the notice of the Delhi Waqf Board and the clergy who runs the captioned Masjid.

17. In the absence of such foolproof exercise to the satisfaction of the people and the public agencies as mentioned above, the NDMC proposal may smack of discrimination that is expressly prohibited under Article 15 of the Constitution of India.

Universally agreed principles

18. As per universally agreed principles of constructing and maintaining roads network, in addition to their natural features, road landscapes have value for cultural reasons which can include aesthetic, historic, scientific, community and social aspects. ... Developing ... open spaces adjacent to a road corridor can provide this reprieve and add value to the community ... Open spaces may also be important for building a sense of local pride and ownership. Community values, interests and needs relative to the road landscape must be considered throughout the design process (Chapter 7 of Part C). https://www.tmr.qld.gov.au/_/media/busind/techstdpubs/environment-management/road-landscape-manual/current-files/partachap1keyprinciples.pdf?sc_lang=en&hash=C5A30876C4B92E25A9CFAB1FD13071FF

Model Building Byelaws

19. Reference is invited to the Model Building Bylaws 2016 for Town and Country Planning for the guidance of the Urban Local Bodies, Urban Development Authorities, State Governments, etc issued by Ministry of Urban Development, Govt of India, Chapter 12: CONSERVATION OF HERITAGE SITES INCLUDING HERITAGE BUILDINGS, HERITAGE PRECINCTS AND NATURAL FEATURE AREAS. It defines a Heritage Building as follows:

20. "Heritage building" means and includes any building of one or more premises or any part thereof and/or structure and/or artifact which requires conservation and/or preservation for historical and/or architectural and/or artisanry and/or aesthetic and/or cultural and/or environmental and/or ecological purpose and includes such portion of land adjoining such building or part thereof as may be required for fencing or covering or in any manner preserving the historical and/or architectural and/or aesthetic and/or cultural value of such building.

Delhi Master Plan 2021

21. In Delhi Master Plan 2021, Chapter 10, Conservation of Built Heritage, item 10.1 CONSERVATION OF BUILT HERITAGE reads as follows:

“Delhi is a historical city, whose remnants are spread right from Mehrauli to Shahjahanabad having large number of monuments scattered all over Delhi. The built heritage of Delhi is an irreplaceable and non-renewable cultural resource.

Besides being part of life for many, it has educational, recreational and major tourism potential. It enhances Delhi's environment, giving it identity and character. It encompasses culture, lifestyles, design, materials, engineering and architecture.

The Heritage Resources include symbols of successive civilizations and cities that came up over the millennia, historic buildings and complexes, historical gardens, water engineering structures and their catchments, the remains of fortified citadels, places for worship and for the deceased, historic cities and villages, unearthed heritage and their components. ”

22. Item 10.2 CONSERVATION STRATEGY says that:

“The agencies concerned with the protection of Delhi's Built Heritage are ASI, GNCTD, State Archaeology Department, NDMC, [concerned municipal body], Cantonment Board and DDA. Built heritage of Delhi needs to be protected, nourished and nurtured by all citizens and passed on to the coming generations. It is suggested that with the aim of framing policies and strategies for conservation, appropriate action plans may be prepared by all the agencies. These should include promotion of conservation of the civic and urban heritage, architecturally significant historical landmarks, living monuments, memorials and historical gardens, riverfront, city wall, gates, bridges, vistas, public places, edicts and the ridge. It is recommended that these should be suitably incorporated while preparing layout plans / schemes. In case of major monuments it is necessary that the surrounding area should be identified in the layout / detail plan, and should have building controls in relation to height, material and spread of the monuments.

It will also be necessary to maintain close interaction and coordination between all these agencies keeping in view the following objectives and requirements.

- i. Maintain and update a database.
- ii. Develop organizational capacity for heritage management.
- iii. Define all the applicable terms.
- iv. Listing of Heritage Buildings based on the following criteria:
 - a) The age of the building;
 - b) Its special value for architectural or cultural reasons or historical periods;
 - c) Its relevance to history;
 - d) Its association with a well-known character or event;
 - e) Its value as part of a group of buildings;
 - f) The uniqueness of the building or any object or structures fixed to the building or forming part of the land and comprised within the curtilage of the building.
- v. Prepare guidelines for development, redevelopment, additions alterations, repairs, renovations and reuse of the heritage buildings.
- vi. Implementing programmes for education and awareness.”

Road widening must accommodate heritage buildings

23. Item 12.8 deals with Road Widening. Accordingly, widening of the existing roads under the Master Plan of the City or Town / Zonal Development Plan or in the Layout Plan shall be carried out considering the existing heritage buildings (even if they are not included in a Heritage Precinct) or which may affect listed natural features areas.

24. Item 9.1 for ROAD WIDENING says that “If road widening lines are proposed under the Master Plan, they shall be such that they protect and not detract from the said heritage sites. If there are any new road widening lines proposed in the revised draft or sanctioned Development Plans / Master Plans / Regional Plans, the Municipal Commissioner/CEO, Municipal Corporation / Municipal Council / Nagar Panchayat or Vice- Chairman, Development Authority or District Collector / Heritage Conservation Committee shall consider the heritage provisions and environmental aspects while considering applications for development permissions in these areas. Necessary steps may be taken to modify the Development Plan / Master Plan/Regional Plan accordingly. Pending this action, the road widening / development of new roads shall not be carried out.

25. No widening of the existing roads under the Development Plan/Master Plan/Regional Plans shall be carried out in a manner which may affect the existing heritage buildings (even if they are not included in a Heritage Precinct) or which may affect listed natural features. Widening of the existing roads under the Master Plan or Zonal Development Plan or Layout Plan shall be carried out considering the existing heritage buildings (even if they are not included in a Heritage Precinct) which may affect listed natural features areas.

Article 15 and 51(f) of the Constitution, inter alia, mandate dropping the proposal

26. Thus, in the totality of facts and circumstances, the impugned proposal is illegal and, secondly, it goes against basic norms of preservation of heritage. Thirdly, it is bereft of uniformity of approach among similar cases thus covering the NDMC proposal under the mischief of Article 15 of our Constitution. Hence, the proposal deserves to be dropped for good.

27. Instead, NDMC and Delhi Traffic Police are requested to reorient their approach and put together a comprehensive planned roadmap to keep easing the traffic and widening the roads if warranted but without disturbing the city’s precious heritage. That would be in tune with our national policy of fulfilling the fundamental constitutional duty: To value and preserve the rich heritage of our composite culture [Art 51(f)].

(Concluded)
