

A WAR OVER WORSHIP IN INDIA: A SPECIAL REFERENCE TO THE PLACES OF WORSHIP ACT, 1991

- Dr. Simmi Virk*

Abstract

Recently, the country has seen an increase in the number of lawsuits filed against Islamic structures/sites, alleging that these structures were created by Mughal rulers by destroying Hindu temples. We have the different lawsuits involving Hindu and Muslim places of worship, for example, Hindu Mahasabha plea on 'Shahi Idgah Mosque', 'Gyanvapi Mosque case', 'Taj Mahal an old Shiva temple', 'Vagdevi temple-Kamal Maula Mosque dispute', The Qutab Minar case etc. Thus, through this article, author tried to explain the opinion of our Apex Court on the validity of the Places of Worship Act, 1991. Author also explained the intention behind the enactment of the Act.

Keywords: Courts, Worship, Secularism, Constitutional, Verdict.

Lex Revolution
ISSN 2394-997X

* Former Associate Professor @ School of Law, Galgotias University, Greater Noida;
Former Assistant Professor @ Amity Law School, Delhi

INTRODUCTION

Following the ‘*Babri Masjid-Ram Janmbhoomi*’ judgement in 2019, the country has seen an increase in the number of lawsuits filed against Islamic structures/sites, alleging that these structures were created by Mughal rulers by destroying Hindu temples. Currently, we have the following lawsuits involving Hindu and Muslim places of worship, for example; Hindu Mahasabha plea on Shahi Idgah mosque, Gyanvapi mosque case, Taj Mahal an old Shiva temple, Vagdevi temple-Kamal Maula mosque dispute, The Qutab Minar case.¹

In Hindu Mahasabha plea on Shahi Idgah mosque case, the Hindu Mahasabha has petitioned in Mathura civil court for the ‘purification’ of the Shahi Idgah mosque. The petitioner claims that the mosque was erected on the sanctum sanctorum of Shri Krishna Janmabhoomi and has asked the court for permission to perform ‘Abhishek’ (purification) and worship Lord Krishna at the site.

In *Gyanvapi mosque case*, the Anjuman Intezamia Masjid committee of the mosque appealed the Allahabad High Court’s decision to permit a commissioner to survey, inspect, and videotape the mosque, over which both Hindus and Muslims have asserted the right to worship.

Another recent example is the Taj Mahal dispute, in which Bharatiya Janata Party leader Rajneesh Singh petitioned the Allahabad High Court to unlock over locked rooms within the Taj Mahal. Petitioner contended that several

¹ Zeb Hasan, “*As Islamic Structures are Targeted, Why are Courts ignoring the Places of Worship Act?*” *The Wire*, available at: <https://thewire.in/law/islamic-monuments-places-of-worship-act>. (last visited on: 01.06.2023)

Hindu organisations thought the Taj Mahal was an ancient Shiva temple known as the 'Tejo Mahalaya.'

In *Vagdevi Temple-Kamal Maula Mosque* dispute, litigation is related to the Bhojshala monument in Madhya Pradesh. Muslims assert that the building is the Kamal Maula Mosque, while Hindus believe it to be a Vagdevi (a Hindu temple dedicated to Saraswati) temple. The ASI came to an agreement that permits Muslims to recite *namaṣ* there every Friday and Hindus to perform *pūja* there every Tuesday.

Similarly, in Qutab Minar litigation, it was claimed that during the building of the Quwwut-ul-Islam property, Qutub Ud-Din Aibak, a general in Mohammed Ghori's army, partially damaged the Shree Vishnu Hari temple and 27 Hindu and Jain temples. As such, it sought the reinstatement of the deities as well as the right to worship on the grounds.

INTENTION BEHIND ENACTING THE WORSHIP ACT

The Places of Worship (Special Provisions) Act, 1991, which prohibited any litigation attempting to change the nature of a holy place from what it was at the time of independence, was challenged in a petition in the Supreme Court. The Court asked the Centre for a response. In *Ashwini Kumar Upadhyay v. Union of India*² the petitioner contended that some provisions³ of the Act are unconstitutional and which bar the judicial review, a basic structure of the Indian Constitution. It also undermines the fundamental concept of secularism. According to the petition, the Act favours one

² WP (C) 1246/2021. See, <https://www.scobserver.in/cases/ashwini-kumar-upadhyay-union-of-india-constitutionality-of-the-places-of-worship-act-case-background/> (last visited on 18.07.2023)

³ The Places of Worship (Special Provisions) Act 1991, Sec. 2.

religious' group over another.

He also contended that the choice of date adversely impacts Hindus, Sikhs, Jains and Buddhists. By freezing the date in 1947, it violates Article 21, the right to life, as well as Articles 14 and 15, which ensure equality. Additionally, the petition claims that this breaches Articles 25, 26, and 29's guarantee of the freedom of religion.

The petitioner further argued, "destroyed temples are protected by personal laws". According to Hindu law, deities are 'eternal,' and they do not lose land when their idols are destroyed. Similarly, Muslim law require a 'waqf' to acquire a place of mosque. Thus, destruction of temples does not constitute a mosque under Islamic law. As a result, demolished temples are still considered temples under the law.

The Centre is not permitted to obstruct Hindus, Jains, Buddhists, or Sikhs from acquiring full control of houses of worship through legal means, nor is it permitted to pass legislation that would restrict the rights protected by Articles 25 and 26 especially regarding retroactive application.

The Petitioner also contended that that Pilgrimage is State subject⁴, and Centre is not permitted to obstruct Hindus, Jains, Buddhists, or Sikhs from acquiring full control of houses of worship through any judicial process and nor it is permitted to pass any legislation which would restrict the rights protected by Articles 25 and 26 and particularly regarding retroactive application. He stated that the Center has encroached its legislative powers by prohibiting the judicial review. The Supreme Court has reaffirmed that

⁴ See, Constitution of India, Schedule - 7, List - II , Entry - 7

the remedy of judicial review cannot be taken away.⁵ Thus as per the petition, sections 2, 3, 4 offend the basic dictum of Hindu law that “the Idol represents the Supreme Being and so its existence is never lost, and deity cannot be divested from its property even by the Ruler or King. Hence, Hindus have fundamental rights under Articles 25 and 26 to worship the deity at the place”.⁶

In *Mahant Ram Swaroop Das Case*⁷, the Court held that, “Even if the idol gets broken or is lost or stolen, another image may be consecrated and it cannot be said that the original object has ceased to exist. According to Vedas, Purans, Geeta and Ramayan, it is a settled principle that deity property will continue to be deity property and other’s possession will be invalid.”

SUPREME COURT ON WORSHIP ACT IN ITS AYODHYA JUDGMENT

The Places of Worship Act, passed by Parliament in 1991, safeguards the basic principles of the Indian Constitution. The preamble of the Indian Constitution emphasizes the importance of protecting the “liberty of thought, expression, belief, faith and worship”. It also emphasizes upon “human dignity and fraternity”. A fundamental precept of fraternity is tolerance, respect for and recognition of the equality of all religious faiths. This was particularly mentioned by the Union Minister of Home Affairs in his address to the Rajya Sabha on September 12, 1991, by stating:⁸

⁵ See, *Indira Gandhi v. Raj Narayan* (1975) SCC (Supp) 1, *Minerva Mills Ltd v. Union of India* (1980) 3 SCC 625, *Kibota Holobon v. Zachilhu* (1992) 1 SCC 309, *Ismail Farooqui v. Union of India* (1994) 6 SCC 360, *L Chandra Kumar v. Union Of India* (1997)(3) SCC 261, *I.R. Coelho v. State of T.N.* (2007) 2 SCC 1

⁶ Ibid

⁷ AIR 1959 SC 951, para 10.

⁸ *M Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors*, 2019 SCC OnLine 1440, para 82.

“I believe that India is known for its civilization and the greatest contribution of India to the world civilization is the kind of tolerance, understanding, the kind of assimilative spirit and the cosmopolitan outlook that it shows...the Advaita philosophy...clearly says that there is no difference between God and us. We must realize that God is not in the mosque or in the temple only, but God is in the heart of a person... Let everybody understand that he owes his allegiance to the Constitution, allegiance to the unity of the country: the rest of the things are immaterial.”⁹

In *M Siddiq* case it was held, “The law addresses itself to the State as much as to every citizen of the nation. The State, has by enacting the law, enforced a constitutional commitment and operationalized its constitutional obligations to uphold the equality of all religions and secularism which is a part of the basic features of the Constitution. The Places of Worship Act imposes a non-derogable obligation towards enforcing our commitment to secularism under the Indian Constitution. The law is hence a legislative instrument designed to protect the secular features of the Indian polity, which is one of the basic features of the Constitution. The Places of Worship Act is a legislative intervention which preserves non-retrogression as an essential feature of our secular values”.¹⁰

The rationale behind the law’s enactment was explained by the Union Minister of Home Affairs on the floor of the Lok Sabha on 10 September 1991:¹¹

⁹ Rajya Sabha Debates, Volume CLX, Nos. 13-18, pp. 519-520 and 522.

¹⁰ *Supra* note 8

¹¹

“We see this Bill as a measure to provide and develop our glorious traditions of love, peace and harmony. These traditions are part of a cultural heritage of which every Indian is justifiably proud. Tolerance for all faiths has characterized our great civilization since time immemorial. These traditions of amity, harmony and mutual respect came under severe strain during the pre-independence period when the colonial power sought to actively create and encourage communal divide in the country. After independence we have set about healing the wounds of the past and endeavoured to restore our traditions of communal amity and goodwill to their past glory. By and large we have succeeded, although there have been, it must be admitted, some unfortunate setbacks. Rather than being discouraged by such setbacks, it is our duty and commitment to taken lesson from them for the future.”

SECULARISM AS A CONSTITUTIONAL VALUE

In *S. R. Bommai v. Union of India*¹², it was held, “Secularism is thus more than a passive attitude of religious tolerance. It is a positive concept of equal treatment of all religions. This attitude is described by some as one of neutrality towards religion or as one of benevolent neutrality. This may be a concept evolved by western liberal thought or it may be, as some say, an abiding faith with the Indian people at all points of time. That is not material. What is material is that it is a constitutional goal and a basic feature of the Constitution. Any step inconsistent with this constitutional policy is, in plain words, unconstitutional.”

The Places of Worship Act, 1991 is related to the obligations of a secular state. It demonstrates the India’s commitment to the equality of all religions.

¹² (1994) 3 SCC 1

Above all, this Act affirms the State's solemn duty to safeguard the equality of all religions and faiths being a basic feature of the Constitution.

Thus, Places of Worship Act was enacted with a purpose. The law speaks about the history and the future of our Nation. We all are aware of our history and the necessity for the Nation to address it, the declaration of independence was a watershed event in healing the wounds of the past. In *M Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors*¹³, "Historical wrongs cannot be remedied by the people taking the law in their own hands. In preserving the character of places of public worship, Parliament has mandated in no uncertain terms that history and its wrongs shall not be used as instruments to oppress the present and the future."

The Places of Worship Act, 1991 was passed at such time, when the Ayodhya movement was gathering traction, led by the Vishwa Hindu Parishad (VHP) and supported by the Rashtriya Swayamsevak Sangh and the BJP.

The Act states that "the nature of all places of worship, with the exception of the Ram Janmabhoomi-Babri Masjid in Ayodhya, shall be maintained as it was on August 15, 1947, and that no suit shall lie in any court with respect to the conversion of a place of worship's religious character, as it existed on that date".

After analyzing the Act, we can find that the long title describes it as "an Act to prohibit conversion of any place of worship and to provide for the maintenance of the religious character of any place of worship as it existed

¹³ Supra note 8 at para 83

on the 15th day of August 1947, and for matters connected therewith or incidental thereto.”

Section 3¹⁴ of the Act makes it a crime to ‘convert’ a place of worship from one faith or sect to another. It restricts the conversion either in full or part of a worship place of any religious denomination into a worship place of a different religious denomination or even a different segment of the same religious denomination.

Section 4¹⁵ of the Act states that the place of worship’s character shall be determined as it was on August 15th 1947. It also prohibits Courts from

¹⁴ The Places of Worship (Special Provisions) Act, 1991; Sec. 3. - Bar of conversion of places of worship. - 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

¹⁵ Ibid, Sec. 4. - Declaration as to the religious character of certain places of worship and bar of jurisdiction of courts, etc. - (1) It is hereby declared that the religious character of a place of worship existing on the 15th day of August, 1947 shall continue to be the same as it existed on that day.

(2) If, on the commencement of this Act, any suit, appeal or other proceeding with respect to the conversion of the religious character of any place of worship, existing on the 15th day of August, 1947, is pending before any court, tribunal or other authority, the same shall abate, and no suit, appeal or other proceeding with respect to any such matter shall lie on or after such commencement in any court, tribunal or other authority:

Provided that if any suit, appeal or other proceeding, instituted or filed on the ground that conversion has taken place in the religious character of any such place after the 15th day of August, 1947, is pending on the commencement of this Act, such suit, appeal or other proceeding shall be disposed of in accordance with the provisions of sub-section (1).

(3) Nothing contained in sub-section (1) and sub-section (2) shall apply to,-

(a) any place of worship referred to in the said sub-sections which is an ancient and historical monument or an archaeological site or remains covered by the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958) or any other law for the time being in force;

(b) any suit, appeal or other proceeding, with respect to any matter referred to in sub-section (2), finally decided, settled or disposed of by a court, tribunal or other authority before the commencement of this Act;

determining whether any place of worship has been converted after August 15th 1947. It declares that the religious character of a place of worship “shall continue to be the same as it existed” on August 15, 1947. Further, this section says that “any suit or legal proceeding with respect to the conversion of the religious character of any place of worship existing on August 15, 1947, pending before any court, shall abate and no fresh suit or legal proceedings shall be instituted”.

Section 5¹⁶ of the Act precludes its application to the ‘Ram Janma Bhumi’ or ‘Babri Masjid’ site. This section stipulates that, “the Act shall not apply to the *Ramjanmabhoomi-Babri Masjid* case, and to any suit, appeal or proceeding relating to it”.

In an article published in *The Quint*, Justice Govind Mathur, a former Chief Justice of the Allahabad High Court, wrote, “The Places of Worship (Special Provisions) Act, 1991 was introduced as a measure to provide and develop glorious traditions of love, peace, and harmony.”¹⁷ In 2019, in Ayodhya verdict, the hon’ble Supreme Court had referred to the Places of

Lex Revolution
ISSN 2394-997X

(c) any dispute with respect to any such matter settled by the parties amongst themselves before such commencement;

(d) any conversion of any such place effected before such commencement by acquiescence; (e) any conversion of any such place effected before such commencement which is not liable to be challenged in any court, tribunal or other authority being barred by limitation under any law for the time being in force.

¹⁶ Ibid, Sec. 5.- Act not to apply to Ram Janma Bhumi-Babri Masjid.—Nothing contained in this Act shall apply to the place or place of worship commonly known as Ram Janma Bhumi-Babri Masjid situated in Ayodhya in the State of Uttar Pradesh and to any suit, appeal or other proceeding relating to the said place or place of worship

¹⁷ “Explained: The relevance of the Places of Worship Act ahead of the Gyanvapi Mosque case hearing in Supreme Court”, *available at*: <https://www.firstpost.com/india/explained-the-places-of-worship-act-gyanvapi-mosque-case-hearing-supreme-court-10683221.html> (last visited on: 07.062022)

Worship Act, 1991 and said it manifests the secular values of the Constitution and prohibits retrogression and it was held by court that¹⁸:

“In providing a guarantee for the preservation of the religious character of places of public worship as they existed on 15 August 1947 and against the conversion of places of public worship, Parliament determined that independence from colonial rule furnishes a constitutional basis for healing the injustices of the past by providing the confidence to every religious community that their places of worship will be preserved and that their character will not be altered”.

As in Ayodhya case, the Supreme Court remarked on the Act without any lis before it. However, unlike the 1994 bench, the 2019 bench understood the significance of the Act for the present as well as the future more clearly than its predecessors could.

Thus, five judges’ bench in M. Siddiq unanimously held that, “by prohibiting the conversion of any place of worship, the Act speaks to the future by mandating that the character of a place of public worship shall not be altered. Secondly, according to the judgement, the legislation seeks to impose a positive obligation to maintain the religious character of all places of worship as it was on August 15, 1947 when India became independent from colonial rule”.¹⁹

Those who now criticise the imposition of an “arbitrary” cut-off date to bar conversion of any place of worship must read the full sentence to

¹⁸ Supra note 8

¹⁹ Ibid

understand why it is significant.²⁰

The expression ‘place of worship’ is defined in broadly to include places of public religious worship of all religions and denominations. It prohibits actions and judicial processes relating to the conversion of the religious nature of any worship place that existed on August 15, 1947. In addition, the Act prohibits the institution of fresh litigation or legal actions, as the court in *M. Siddiq* emphasised.²¹

Further, Speaking in support of the cut-off date of 15 August 1947, the Supreme Court cited former MP Malini Bhattacharya, who explained the significance of the cut-off date thus²²:

“But I think this August 15, 1947, is crucial because on that date we are supposed to have emerged as a modern, democratic and sovereign State thrusting back such barbarity into the past once and for all. From that date, we also distinguished ourselves...as State which has no official religion, and which gives equal rights to all the different religious denominations. So, whatever may have happened before that, we all expected that from that date there should be no such retrogression into the past.”²³

CONCLUSION

Thus, by reading *M. Siddiq* case carefully we will understand that the grounds of “arbitrary irrational retrospective cut-off date” and

²⁰ V. Venkatesan, “*Places of Worship Act: Is Supreme Court Unwittingly Helping Centre With Proxy Litigation?*” available at: <https://thewire.in/law/places-of-worship-act-ashwini-kumar-supreme-court-ayodhya> (last visited on: 08.062022)

²¹ Ibid

²² Supra note 8 at para 81

²³ Supra note 11 at pp. 443-444

“unjustified bar on the remedies against illegal encroachment on the places of worship and barbaric acts of the invaders” have already been settled in the judgement. This judgement unequivocally supported the legality of the 1991 Act. If the Supreme Court now goes along and reopens this question, it may undermine an essential ingredient of its Ayodhya ruling. A responsive government at the Centre should clearly oppose the hearing of the petition challenging the validity of 1991 Act in view of the court’s Ayodhya judgment in 2019.

