# Have courts forgotten the Places of Worship Act, 1991

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The year before the Babri Masjid was demolished, Parliament enacted the Places of Worship (Special Provisions) Act, 1991, a significant piece of legislation that prohibits “conversion of any place of worship” (Section 3) and provides for “the maintenance of the religious character of any place of worship as it existed on the 15th day of August, 1947” (Section 4). No person can “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”. The Act does not apply to the Ram Janmabhoomi-Babri Masjid; it extends to the whole of India barring what was then the State of Jammu and Kashmir.

LISTEN: Despite the Act’s provisions, lower courts have allowed suits challenging the religious character of certain places of worship, such as the Gyanvapi Masjid and the Shahi Idgah in Mathura.

The Act has been challenged in the Supreme Court by BJP spokesperson and advocate Ashwini Kumar Upadhyay and by the Vishwa Bhadra Pujari Purohit Mahasangh.

Section 4 of the Act stipulates that “any pending 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, …pending before any court, tribunal or other authority” would abate upon the Act coming into force. The Act thus places a bar on the institution of fresh suits and appeals seeking conversion of places of worship. Section 4 also stipulates that suits and appeals filed before the commencement of the Act claiming that conversion of the religious character of a place of worship had taken place after August 15, 1947, will not abate.

The passage of the Act was not smooth, as records of parliamentary debates in the Tenth Lok Sabha (September 1991) show. Moving the Bill, Home Minister S.B. Chavan said it was “considered necessary to adopt these measures in view of the controversies arising from time to time with regard to conversion of places of worship which tend to vitiate the communal atmosphere”. The law, he said, was intended “not to create new disputes and to rake up old controversies which had long been forgotten by the people but facilitate the object sought to be achieved” (Lok Sabha debates, Vol V, Nos 41-49, page 448).

BJP members opposed it. Uma Bharti, then a leading voice of the Ramjanmabhoomi movement, said: “By maintaining the status quo of 1947, it seems you are following a policy of appeasement.”

Somnath Chatterjee of the CPI(M) referred to a resolution moved by fellow party MP Zainal Abedin. The resolution, which discussed why a law like the Places of Worship Act was necessary, was withdrawn when the Bill was introduced. Chatterjee also read out from a letter that Vishva Hindu Parishad president Ashok Singhal had sent to all Members of Parliament. It said that the Dharmacharyas “who with a view to maintain cordial relations between Hindus and Muslims and to foreclose this issue for future have made a modest demand limited to the restoration of only three most important shrines at Ayodhya (Sri Ram Janma Bhumi), Mathura (Sri Krishna Janmasthan) and Varanasi (Sri Vishwanath temple)”. Chatterjee commented that instead of tackling serious issues, if the country today “fritters away its energies on fratricidal conflict, that would be a very sad day for us”.

Extending his party’s support to the Bill, Chatterjee said that “at least as far as this big bone of contention as to whether a particular place of worship should be a masjid or a temple is concerned, this should be ended here and now by the passage of this Bill and so far as Ayodhya is concerned, it should be settled amicably or through judicial verdict”.

On the rationale for a cut-off date, CPI(M) MP Malini Bhattacharya said this was “crucial because on that date

[August 15, 1947], 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… a 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."

Ram Vilas Paswan said the law would check attempts by certain forces to incite violence by claiming as their own structures belonging to one community. "Today, the issue at stake is our Constitution. The issue is to save that India, for whose freedom, Hindus, Muslims, Sikhs, and Christians had fought together and it is the duty of every citizen to safeguard the Constitution," he said.

The importance of the Act was reiterated in the five-judge Constitution Bench judgment on the Ayodhya title suit in 2019. It said that the "law was a legislative instrument designed to protect the secular features of the Indian polity, which is one of the basic features of the Constitution". It held that the "court cannot entertain claims that stem from the actions of Mughal rulers against Hindu places of worship in a court of law today. For any person who seeks solace or recourse against the actions of any number of ancient rulers, the law is not the answer. Our history is replete with actions that have been judged to be morally incorrect and even today are liable to trigger vociferous ideological debate." The Act, the court held, reflected the secular values of our Constitution and strictly prohibited retrogression.

The Krishna Janmabhoomi temple and the Shahi Idgah at Mathura in Uttar Pradesh. | Photo Credit: R.V. MOORTHY

"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," the court said. It added that the "law addresses itself to the state as much as to every citizen of the nation. Its norms bind those who govern the affairs of the nation at every level. Those norms implement the Fundamental Duties under Article 51A and are hence positive mandates to every citizen as well. The state has, by enacting the law, enforced a constitutional commitment and operationalised its constitutional obligations to uphold the equality of all religions and secularism, which is a basic structure of the Constitution."

While awarding the disputed site at Ayodhya to the child deity Ram Lalla, the Supreme Court stated that similar such cases could not be entertained with respect to other sites in view of the 1991 Act. In 1991 itself, a group of priests petitioned a court seeking demolition of the Gyanvapi mosque in Varanasi and transfer of the land to the Hindu community. In 1998, the Mosque Management Committee filed an application averring that a dispute involving religious sites could not be adjudicated as it was barred by law. The lower court dismissed the application.

The matter went to the High Court, which stayed the proceedings. In 2019, within a month of the announcement of the Ayodhya verdict, a fresh suit was filed by an advocate seeking a survey of the Gyanvapi mosque by the Archaeological Survey of India (ASI). The High Court placed an interim stay on the ASI survey, which the lower court had allowed. Despite the stay, the Varanasi court directed the ASI to survey the mosque compound.

Irrespective of what the Act says, lower courts have allowed the filing of suits challenging the religious character of two places of worship, the Gynavapi Masjid and the Shahi Idgah in Mathura. There was also a suit demanding restoration of the right to offer puja in the Qtub Minar complex on the grounds that it was originally a complex of 22 Hindu and Jain temples.

In August 2021, five women affiliated to the Vishwa Vedic Sanatan Sangh petitioned a Varanasi civil court to allow them the right to pray round the year at a shrine behind the western wall of the Gyanvapi mosque complex. On April 8, 2022, a Varanasi civil judge (senior division) appointed an Advocate Commissioner to conduct a videographic survey of the mosque and determine the purported existence of Hindu idols. The mosque committee approached the Allahabad High Court, which refused to stay the survey. In May 2022, the matter reached the Supreme Court, which also refused to stay the survey.

The Uttar Pradesh Sunni Central Waqf Board and the mosque committee in the Gyanvapi case challenged the filing of the suits citing the Places of Worship Act. The Allahabad High Court ruled that the 1991 Act had not defined what constituted religious character and that if the conversion of a religious place had taken place "much before" the commencement of the Act, acquiescence or silence would not bar a party from moving the court. While hearing a plea challenging the maintainability of the suit in the Gyanvapi matter, Chief Justice of India (CJI) D.Y. Chandrachud in May 2022 observed that finding the nature of the religious place was not barred under the 1991 Act. The same month, a Mathura district court admitted a plea seeking the transfer of the land of the Shahi Idgah mosque to the Krishna Janmabhoomi Sthal . And in August 2023, the Supreme Court allowed an investigation by the ASI using non-invasive technology in the Gyanvapi mosque.

Fuzail Ahmad Ayyubi, Advocate-on-Record in the Supreme Court for the management committee of the Gyanvapi mosque, told Frontline that the 2019 Ayodhya judgment had in no manner approved of the placing of idols in 1949 or the demolition in 1992.

"It had never found the mosque to have been built by demolishing a temple. It was in this background that the court gave a separate section in the 1991 Act and held non-retrogression as a 'foundational feature of the fundamental constitutional principles of which secularism is a core component'. In the same breath, it was also held that courts are not the answer to allegations of the actions of Mughal rulers," he said.

"In all these suits, the foundational grievance stems from allegations against Muslim rulers of having demolished some place of worship. If 1947 is the cut-off and the 2019 judgment explains that it was a conscious choice as Independence was a watershed moment, it is only to turn the law against its intent if despite the bar, surveys and commissions are allowed and evidence gathered for a plaintiff who admits they have no evidence to support their claims," said Ayyubi.

Sanjay Hegde, Senior Advocate in the Supreme Court, believes that the 1991 Act was implicitly upheld in the Ayodhya judgment. The judgment was a carefully crafted judicial balancing act that said both sides had proved their case, no temple had been destroyed, and both sides were given decrees. "What the country took away from this was that the Hindu side won and the Muslim side lost. Despite its careful crafting, the court could not control the messaging thereafter," he told Frontline.

The Supreme Court used its powers under Article 142 to provide a remedy in the Ayodhya dispute. It is generally felt that after getting Ayodhya out of the way, the courts appeared to be backtracking from all that they said. A comment from the CJI in May 2022, on the Mosque Management Committee's plea challenging the survey ordered by the Varanasi court, provided the rationale for allowing litigation in the Gyanvapi case. The court noted that while there was no question of converting the character of a place of worship, one could always determine its original character.

Hegde pointed out that even if the surveys showed the existence of a structure 400 years ago, the legal character of that place would not change. "We are not concerned with what happened 400 years ago but what the status was on August 15, 1947," he said.

Syed Ali Nadeem Rezavi, a history professor at Aligarh Muslim University, pointed out that all the "disputes" were over heritage structures that were not likely to be built again. "That is why the framers of our Constitution

and lawmakers came up with the understanding that all those structures that India as an independent nation inherited would be maintained on an as-is-where-is basis. No new elements would be added. If there were structures of a religious nature where no prayers were being held, no prayers would be allowed to be held. The Supreme Court gave the assurance that the law would apply," he said.

"I am not concerned about what the BJP is doing. I am concerned that those sitting in our highest courts have forgotten the Constitution and all the Acts of Parliament to protect the heritage structures," Rezavi said.

Rezavi, who is the secretary of the Indian History Congress, said that no one had claimed that no temple was broken in Mathura or Varanasi. "These are recorded facts. There are primary sources that attest to it. What is under contest among historians is why they were broken. The justices could have seen the iconography. At the time of Independence, it was used for one kind of religious practice. On the other side of the wall, there was another kind of religious practice. In Varanasi, there is no clash between communities. Why can't the two monuments, the mandir and the mosque, coexist? For around three or four centuries, prayers have been allowed. The dispute is now being brought into focus by our courts, which is shameful," he said.

About the surveys, Rezavi said: "All that those surveys will say is that there is some stone below, some obstruction. The penetrating surveys won't be able to tell whether it is a mosque or a temple etc. Even if a temple was there, how does it make a difference? Aurangzeb was a sovereign emperor not guided by a democracy and a constitution. He was a man of the 17th century. Are we also going to punish Pushyamitra Sunga, who went on a demolition spree against Buddhist temples?

"I am concerned only about our heritage. One should not assign religion to architectural elements. Using the material of earlier structures does not mean that they were broken. In premodern times, there was a paucity of building materials, and it is possible that all kinds were used. The Indian History Congress has always passed resolutions for the protection of our heritage structures."

Referring to the levelling of a shrine in the Mehrauli area of Delhi, Rezavi said it was vandalism of the worst kind. "It worries me as a historian. This is more dangerous than what is happening in Varanasi or Mathura," said Rezavi.

Ram Puniyani, social activist and the chairman of the Centre for the Study of Society and Secularism, believes that the courts are unable today to withstand the pressure of communal politics. "Majoritarian politics is in constant search for such issues. They can create hysteria and bend the legal case towards their end. The Supreme Court recognised that what happened in 1949 and 1992 was a crime. The Places of Worship Act is after all an Act of Parliament. The courts have to see through the manufacturing of controversies. The only objective is to polarise society," he said.