

## **The Places of Worship Act, 1991: A Constitutional Secular Safeguard or Bar on A Historical Justice?**

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### **ABSTRACT**

This paper critically evaluates the constitutional validity and contemporary relevance of the Places of Worship (Special Provisions) Act, 1991 in the context of rising claims for the reclamation of places of worship in India. This debate has assumed renewed urgency in the wake of the Ayodhya verdict in *M. Siddiq (D) Thr Lrs v. Mahant Suresh Das*, as well as on-going disputes in respect of Kashi, Mathura, and Sambhal, amongst other places of worship in India. Essentially, the Places of Worship (Special Provisions) Act, 1991 intends to preserve the religious nature of places of worship as it existed on 15th August 1947, in order to promote communal harmony and preserve the secular ethos of the nation. This paper adopts a doctrinal methodology, which entails an analysis of statutory provisions, constitutional principles, and significant judgments delivered by courts in respect of the Places of Worship (Special Provisions) Act, 1991, particularly in respect of sections 3 and 4 thereof, which prohibit conversion and bar legal actions in respect of the pre-independence era. The paper also reveals the conflict of different constitutional principles, like secularism and public order on one hand, and historical justice, equality, and religious freedom on the other.

The research critically examines whether the Act is discriminatory and limits judicial remedies, infringing on fundamental rights under Articles 14, 25, and 26, and also evaluates arguments for the need for the Act as a stabilizing force in a diverse society. The idea of “religious character” and “once a temple, always a temple” is also discussed.

The research concludes that though it is a tool for maintaining peace at the constitutional level, it needs judicial interpretation, allowing for exceptions in historical cases, so that it does not lose its purpose of preserving peace at the national level.

**KEYWORDS:** Places of Worship Act, 1991; Religious Character; Secularism; Historical Justice; Judicial Review; Fundamental Rights; Articles 14, 25 and 26; Communal Harmony; Status Quo (15 August 1947); Conversion of Places of Worship; Ayodhya Dispute; Gyanvapi Mosque; Krishna Janmabhoomi; Access to Justice; Constitutional Validity

### **I. INTRODUCTION**

#### **1. Background of Research**

In recent years, there have been multiple calls for the reclamation of religious structures. After the Ayodhya<sup>3</sup> judgment and the establishment of the Ram temple at Ram Janmabhoomi, there have been

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<sup>3</sup> *M. Siddiq (D) Thr. LRs. V. Mahant Suresh Das & Ors.*, (2020) 1 SCC 1

multiple calls to reclaim religious institutions all over India which were demolished by Islamic invaders during the medieval era. Some of the most highlighted matters are the Krishna Janmabhoomi<sup>4</sup> case at Mathura, the Gyanvapi<sup>5</sup> Mosque issue at Varanasi, and the Sambhal<sup>6</sup> mosque issue, which are recent ones and have gained a lot of national attention and media coverage. These cases are pending before the Supreme Court questioning the Places of Worship Act. (Hereinafter to be referred as “the Act”)

The supporters of these Cases say that the Places of Worship Act, 1991 is a hindrance in reclaiming religious places linked to our indigenous identity, and therefore it is in violation of our right to self-determination, right to equality, and right to freedom of religion, and hence is unconstitutional. However, the other side says that this Act is made to protect the secular fabric of the country, and thus such reclamations are against the provisions of the Act and are therefore illegal.

Hence, the study of this Act becomes inevitable and necessary in today’s context. The Act places a prohibition on the conversion of a place of worship and provides that all suits and proceedings filed in regard to the conversion of the religious character of a place shall be abated. The intention of the Act was to prohibit the conversion of places of worship and to provide for the maintenance of the religious character of any place of worship as it existed on 15 August 1947.<sup>7</sup>

The Act was enacted with the view that any alteration or claim for alteration of the religious character of any place of worship will pose a serious threat to national unity, public order, communal harmony, and the secular fabric of the nation. Thus, the stated purpose of the Act is to maintain peace and amity.

However, the Act has led to an inevitable debate, as it raises critical questions with respect to justice, historical accountability, equality, and access to legal remedies. While the proponents of the Act argue that it is important for communal harmony, critics contend that it forecloses the possibility of resolving historical wrongs and reclaiming cultural roots. The exception made for the Ram Janmabhoomi–Babri Masjid case has further intensified the debate, as it is argued that this exception is arbitrary and creates inconsistency within the law.

This paper will critically examine whether the Places of Worship Act acts as a constitutional protection for enforcing secularism or whether it functions as a barrier to reclaiming cultural identity and achieving historical justice.

## 2. Research Question –

3. Does the Act uphold secularism or suppress historical justice?
4. Constitutionality of the Act.

## C. Research Methodology

The present study is largely a doctrinal and analytical study that seeks to understand and evaluate the provisions of the law, the constitutional principles, and the important judicial pronouncements. The primary sources for the study will be the Places of Worship Act, 1991, the relevant provisions of the Indian Constitution, and the primary judicial pronouncements. The secondary sources will cover books, articles, research papers, and the Internet. The study will be largely analytical in nature and will cover the constitutional validity and implications of the Act, particularly with regard to secularism, fundamental

<sup>4</sup> Bhagwan Shri Krishna Virajman v. U.P. Sunni Central Waqf Board, O.S. No. 17 of 2023 (Allahabad H.C.).

<sup>5</sup> Committee of Management, Anjuman Intezamia Masajid Varanasi v. Rakhi Singh, often associated with SPL(C)9388/2022.

<sup>6</sup> Committee of Management, Jami Masjid Sambhal, Ahmed Marg Kot Sambhal v. Hari Shankar Jain & Ors, SLP(C) No. 21599/2025 (Supreme Court of India).

<sup>7</sup> Statements of object and Reasons of the Places Of Worship Act, 1991.

rights, and the idea of historical justice. The study will be limited to the Indian legal context and will only be based on the literature available on the subject.

## II. HISTORICAL BACKGROUND OF THE ACT

In order to understand the purpose and necessity for the Places of Worship Act, 1991, it is important to consider the larger context and history that led to the legislation. While India has always been a melting pot for various religious practices and faiths, the memory and experience of religious conflicts in the medieval era continue to inform contemporary debates and assertions about the ownership and location of these sites.

However, the situation came to a boiling point in the late 1980s and early 1990s. The dispute over the Babri Masjid in Ayodhya continued to simmer, and the movement to build the Ram Temple was gaining momentum. The Rath Yatra led by L. K. Advani helped to fuel support for the Ram Janmabhoomi cause. It was in this context that the government decided to enact legislation to calm the situation and prevent fresh conflicts from emerging. The legislation was enacted in an effort to prevent fresh conflicts from emerging and to calm the situation.

Some critics also argued that the Act was not well drafted and was vaguely framed, as the ruling government was in a hurry to satisfy the demands of minority communities, especially Muslims. However, the government claimed that there were religious conflicts, and these conflicts were disturbing the communal harmony in society. Therefore, the need for the law arose. The Home Minister, S. B. Chavan, argued that such steps had to be taken to stop controversies regarding the conversion of places of worship, as such controversies would ruin the communal harmony in society. He argued that the law would prevent new controversies and maintain peace in society.

Keeping all these aspects in mind, the Act framed the religious character of the place of worship as it was on August 15, 1947. The reason for choosing August 15, 1947, as a cutoff point is that it symbolizes the end of colonial rule in India. The idea behind this is that after attaining freedom, there is no point in dwelling on old conflicts; hence, the Act can be construed as a move towards secularism and avoiding conflicts that arise out of old issues. The idea behind this was that opening old wounds might cause new conflicts, and hence, the law was framed as a precautionary measure to maintain peace and harmony in society. However, looking at the background, one major point arises: is it justified to ignore the past in the name of the present?

### Statement of Object and Reasons of the Act-

1. "In view of the controversies arising from time to time with regard to conversions of places of Worship, it is felt that such conversions should be prohibited.
2. In order to foreclose any controversy in respect of any place of worship that existed on 15<sup>th</sup> day of August, 1947 it is considered necessary to provide for the maintenance of the religious character of such Place of worship as it existed on the 15<sup>th</sup> day of August, 1947. As a consequence thereof, all the suits or other proceedings pending as on 11<sup>th</sup> day of July, 1991 with respect to any of such place of worship, may abate and also further suits or other proceedings may be barred.
3. However, since the case relating to the place commonly called Ram Janam Bhumi-Babri Masjid forms a class by itself, it has become necessary to exempt it entirely from the operation of this Act.
4. Moreover, in order to maintain communal harmony and peace, matters decided by court, tribunals or other authorities, or those settled by parties amongst themselves or through acquiescence, between 15<sup>th</sup> Day of August, 1947 and the 11<sup>th</sup> day of July, 1991 are also exempted from the operation of this Act.

5. The 11<sup>th</sup> day of July, 1991 is proposed as the commencement date of the Act as on the day the President addressed the Parliament making such a declaration.
6. The Bill seeks to achieve the above objectives.”<sup>8</sup>

### III. KEY PROVISIONS OF THE ACT

The Act is not very bulky instead it is a small legislation containing big questions. There are certain provisions under the Places of Worship Act, 1991, which are the basis for the entire discussion on the Act. Among them, Sections 3 and 4 are the most crucial provisions as they specifically address the issue of conversion and the maintenance of the religious character of the places of worship.

**Section 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.”<sup>9</sup>

It specifically prohibits the conversion of a place of worship from one religion or denomination to another religion or denomination of same religion. This means that no person or group can change the religious character of a place of worship. This provision has been specifically designed to prohibit the change in the character of the places of worship. In this regard, the provision under Section 3 can be said to be playing a preventive role by legally prohibiting the change in the character of the places of worship.

The provisions of **Section 4** of the Act go a step further by stating that the religious character of a place of worship shall be maintained as it was on 15<sup>th</sup> August 1947. It says- “It is hereby declared that the religious character of a place of worship existing on the 15<sup>th</sup> day of August, 1947 shall continue to be the same as it existed on that day.”<sup>10</sup> It also states that all pending legal proceedings before courts on the conversion of the religious character of these places shall be closed. It further extends and also states that no new cases shall be filed on this issue if they relate to a period before independence. It is pertinent to note that the Act provides fixation of “**Religious Character**” of the place of worship and bar on legal proceeding is also with respect to Religious Character. It is claimed by many scholars that once a temple is always a temple, the Religious Character of temple will remain same even if it is destroyed. This point will be discussed in detail later on.

The provisions of Section 4 of the Act also raise various legal and constitutional questions. It is true that the provisions of this Act aim to maintain peace and harmony. However, it can be said that denying judicial remedies on this issue is too rigid. By denying judicial remedies on this issue, the Act may be denying justice to those who want to settle historical claims. However, by denying exceptions to this rule except in the Ram Janmabhoomi-Babri Masjid<sup>11</sup> case, there is an issue of arbitrariness.

Therefore, while Sections 3 and 4 of the Act aim to ensure stability and avoid conflicts, their strict nature has led to a continued debate on whether these legal restrictions on these issues are entirely justified or whether they go too far in restricting legitimate claims to history and identity.

The Act also provides exceptions to this Act. **Section 4(3)** talks about the same, it provides that Nothing contained in this shall apply to any place of worship which is recognised as an ancient or historical

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<sup>8</sup> The Places of Worship (Special Provisions) Act, 1991, No. 42 of 1991, Statement of Objects and Reasons, Acts of Parliament, 1991 (India).

<sup>9</sup> Section 3 of the Act.

<sup>10</sup> Section 4(1) of the Act.

<sup>11</sup> M. Siddiq (D) Thr. Lrs v. Mahant Suresh Das, (2019) 18 S.C.C. 40 (India).

monument, or as an archaeological site or remains, and which is protected under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or under any other law that is currently in force.

**Section 5** also created an Special exception with respect to Ram Janmbhoomi- Babri masjid dispute. It says -ct 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.<sup>12</sup>

#### IV. CONSTITUTIONAL ANALYSIS OF THE ACT

##### Arguments against the Act-

Though, The Supreme Court’s judgment in *M. Siddiq (D) Thr Lrs v. Mahant Suresh Das*,<sup>13</sup> certain observations were made regarding the significance of the Act in preserving secularism, it is pertinent to note that there was no direct constitutional challenge to the Act, which might have been adjudicated upon in this case. Therefore, it is pertinent to note that such observations may not be of precedential value, especially when there is an express provision of exclusion under Section 5

**Against Judicial Review-** The major constitutional question, however, arises from the limitation imposed on judicial remedies. The Act, in restricting judicial remedies, limits the enforcement of fundamental rights under **Article 32** of the Indian Constitution and Article 226 of the Indian Constitution. This is particularly pertinent, especially since Article 32 of the Indian Constitution has been characterized as the “heart and soul” of the Constitution by Dr. B. R. Ambedkar.

**Colourable Legislation-** Moreover, the Act has also been accused of being an example of colourable legislation as it indirectly limits judicial review, which is an essential part of the basic structure of the Constitution. It has been held by the Courts consistently that what cannot be done directly cannot be done indirectly.

**Violative of Art. 25 and 26-** Secondly, the Act also gives rise to a number of questions pertaining to the right to religious freedom under **Article 25** of the Indian Constitution and **Article 26** of the Indian Constitution. Faith, belief, and worship are the basic tenets of the right to religious freedom. By denying individuals and communities the right to approach the Courts for the return of their sacred places of worship, such as the Rama temple at Ayodhya, the Krishna temple at Mathura, and the Shiva temple at Varanasi, the Act may be imposing an unreasonable restriction on the right to religious freedom. Right to Worship also contained Right to have a Place of worship and to reclaim place of worship otherwise it will be a fruitless right.

**Exception of Archaeological sites-** Yet another layer of complication has been added by the interpretation of Section 4(3)(a), which excludes ancient and historical monuments that are protected under the **Ancient Monuments and Archaeological Sites and Remains Act, 1958**. It has been argued that the monuments at Varanasi and Mathura are likely to come under this section, as any monument that is over 100 years old and has historical and archaeological importance may be considered to be an “ancient monument” under this act. Hence all the places of worship which are more than 100 yr old are excluded by the application of the Act and thus that can be challenged for conversion.

**Jurisdictional Issue-** Another important issue that needs to be considered is that of the legislative competence of the Parliament. It has been argued that, as per **Article 246** of the Indian Constitution, the

<sup>12</sup> Section 5 of the Act

<sup>13</sup> *M. Siddiq (D) Thr. Lrs v. Mahant Suresh Das*, (2019) 18 S.C.C. 40 (India).

subject of “matters of pilgrimage” comes under the State List, and hence the state legislatures have exclusive authority in this regard. It has been argued that the Parliament may have transcended its authority by enacting a law that directly involves religious places in the states. This issue directly involves the federal nature of the Constitution, which has been incorporated as part of the basic structure of the Constitution by the Supreme Court in the case of *S. R. Bommai v. Union of India*<sup>14</sup>.

**Judicial precedents like the *Ismail Faruqui v. Union of India***<sup>15</sup> case have also been cited in this regard. In this case, it was argued by the Supreme Court of India that a mosque is not an essential part of the practice of Islam since prayers can always be performed at other places. Therefore, it can be argued that the inflexibility of protecting all places of worship on grounds of their religious nature, as provided for under the Act, needs to be re-evaluated. However, it is also important to note that such arguments are subject to controversy and need to be evaluated in consonance with the larger idea of secular equality. It is also important, however, to understand the rationale behind the Act. It is argued that if unrestricted litigation is allowed on historical religious issues, it would lead to a Pandora’s box scenario, causing unrest and instability in society.

**Once a Temple always a Temple** - It is also claimed that once a Temple always a Temple. In Hindus, ‘Deity’ is perpetual and immortal even if the ‘idol’ is misplaced or rejuvenated. And therefore ‘Temple property is never lost even if it is enjoyed by the strangers for hundreds of years.’<sup>16</sup> Therefore the Deity doesn’t lose its right due to large time span. ‘Once a temple, always a temple’ was argued vividly in Ram Janm Bhumi matter also. It is said that once a Pran Pratistha of deity has been done the deity will come to the temple and the temple becomes his place of residence and the deity’s heart will come in the holy statute of the deity . The term ‘Prana Pratishta’ is made from 2 words ‘Prana’, meaning life force or vital energy, and ‘Pratishta’, meaning establishing or installing. Thus, Prana Pratishta refers establishing the life force in the idol. It is considered that through this sacred act, the Idol of deity becomes a living deity, capable of receiving offerings and blessings. Hindu culture there are two types of Pran Pratistha has been done first to be called as Asthaya Pran Pratistha, which is usually done in the house temple . In this the deity and temple can be moved from time to time .The second type of Pran Pratistha is called as Sthaya Pran Pratistha , in this once it has been done the temple become the permanent place of deity , the deity’s statue can be moved from another place outside temple or any other place inside temple in any circumstances. So, if the Sthaya Pran Pratistha has been done , which is usually done in case of public temple ,the religious character of temple cant be changed in any circumstances even if it has been destroyed. The bare reading of Act provide restriction with respect to religious character of the temple and hence if a public temple is destroyed and another structure has been made upon it it will still a temple and its religious character will not change. With respect to this it is one of the question that Whether temples ‘destroyed by invaders’ remain temples under Hindu and Islamic personal law? In the case of Ashwini Kumar Upadhyay in which the constitutionality of the Act has been challenged.

Despite all the criticisms, the Act has continued to be in force. It has not been repealed, nor has its validity been held to be unconstitutional. However, the challenges that the Act faces, as evident from the case of *Ashwini Kumar Upadhyay v. Union of India*<sup>17</sup>, indicate that the constitutional validity of the Act is very much a live issue.

<sup>14</sup> S.R. Bommai v. Union of India, (1994) 3 S.C.C. 1 (India).

<sup>15</sup> M. Ismail Faruqui v. Union of India, (1994) 6 S.C.C. 360 (India).

<sup>16</sup> P.V. Kane Vol. III page 327-328

<sup>17</sup> Ashwini Kumar Upadhyay v. Union of India, Writ Petition (Civil) No. 449 of 2020 (India).

In conclusion, the Act is a paradigm of the interplay between different constitutional principles such as secularism, religious freedom, equality, federalism, and access to justice. It is a very necessary piece of legislation that provides for the maintenance of law and order in society. However, its inflexibility, its exemptions, and its curtailment of access to justice are all issues that raise serious constitutional problems.

### **Scholarly Justifications in Favour of the Places of Worship Act, 1991-**

It may be argued that the Places of Worship Act, 1991 is a vital legislative enactment that seeks to safeguard the secular ethos of the Republic of India and usher in communal peace and harmony in the country. The essence of the Act lies in the twin duty that it seeks to enforce: the prohibition of the conversion of places of worship and the maintenance of the religious character of these places as it was on the 15<sup>th</sup> of August, 1947. The date of the 15<sup>th</sup> of August, 1947, has been consciously chosen to ensure that the controversies of the past are not revisited, thereby allowing the nation to look to the future rather than dwell on the past.

From the constitutional perspective, the Places of Worship Act, 1991 is a reflection of the constitutional commitment to secularism, which has now been incorporated as part of the basic structure of the Constitution of India. The constitutional commitment to secularism seeks to treat all religions equally and to maintain the status quo, thereby ushering in peace, harmony, and communal amity in the Republic of India, which has had a chequered past on the issue of religious history.

This restriction on certain legal proceedings through a bar under Section 4(2) can also be justified as a reasonable restriction in the larger public interest. This is not an exclusionary policy, but rather a form of legislative policy that is designed to restrict litigation over certain grievances that may not be effectively addressed in contemporary times. This, in a way, is a measure of judicial discipline that prevents the abuse of legal process for addressing historical issues that have already been laid to rest.

However, the Act can also be justified on the basis of necessity. This is because, in a country like India where religious disputes are sensitive issues, the legislature was justified in providing a law that gives precedence to peace and order over retrospective claims. Without this law, there is a very real possibility that there could be a great deal of litigation and unrest based on different historical accounts. More importantly, it has been seen through judicial interpretations that the Act does not shut the door on inquiry completely but rather regulates it. This is important as it ensures that while the basic intent of maintaining the status quo is met, at the same time, a scope of judicial inquiry is available.

## **V. JUDICIAL ANALYSIS OF THE ACT –**

### **1. M. Siddiq (D) Thr Lrs v. Mahant Suresh Das<sup>18</sup>**

The Supreme Court, in its judgment on the Ayodhya case, made some pertinent observations on the Places of Worship Act, 1991, even though the case was specifically excluded under Section 5 of the Act. The Supreme Court upheld the true spirit of the Act and termed it a reflection of the constitutional commitment to secularism. It also highlighted that the Act enforces the principle of non-retrogression, which implies that the religious character of places of worship as it existed on 15<sup>th</sup> August 1947 has to be preserved.

The judiciary also saw the Act as a legislative measure that prevents historical disputes that may create public disorder if reopened. By doing so, the judiciary has acknowledged that the Act is a measure that enhances the secular character of the nation and promotes peaceful coexistence among different religious communities.

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<sup>18</sup> M. Siddiq (D) Thr. Lrs v. Mahant Suresh Das, (2019) 18 S.C.C. 40 (India).

## 2. Ashwini Kumar Upadhyay v. Union of India<sup>19</sup>

The constitutional validity of the Act has also been challenged directly by the Supreme Court in this case. The petitioner has challenged the validity of the Act on various grounds, including the arbitrariness of the cut-off date of 15<sup>th</sup> August 1947, the restriction on judicial remedies under Section 4(2) of the Act, and the violation of the fundamental rights guaranteed under Articles 14, 25, and 26 of the Constitution. The major 3 issues are-

1. Whether Sections 2, 3 and 4 of the Places of Worship Act 1991, violate Articles 14 and 15 and the guarantee of equality in the Constitution?
2. Whether Sections 2, 3 and 4 violate Articles 25, 26 and 29 and the basic feature of secularism in the Constitution?
3. Whether temples 'destroyed by invaders' remain temples under Hindu and Islamic personal law?

It has been argued that by proscribing the maintenance of suits regarding the conversion of religious character before 1947, the Act limits access to justice and the rule of judicial review, which is part of the basic structure of the Constitution. The case is pending before the Supreme Court, and the outcome of the case is likely to be decisive for the future of the Act.

## 3. Anjuman Intezamia Masjid Committee v. Vishnu Shankar Jain<sup>20</sup>

In the case of Gyanvapi, the Supreme Court made a significant clarification regarding a key provision of the Places of Worship (Special Provisions) Act, 1991, which states, in essence, that the act does not impose an absolute bar on judicial inquiry in these matters. In this case, the court permitted a survey to be conducted, stating that though the act prohibits the conversion of the religious nature of a place of worship, it does not necessarily bar the determination of the existing or original nature of the place of worship. This difference between conversion and determination assumes significant importance in this context, as it suggests that the courts can be willing to conduct fact-finding exercises, such as the survey conducted by the Archaeological Survey of India (ASI), as long as the status quo is maintained. This, in a way, suggests a balanced approach on the part of the judiciary, where the legislative intent of maintaining harmony between different communities is still satisfied, while at the same time, a small window for judicial intervention is left open.

## 4. Ongoing Disputes: Gyanvapi<sup>21</sup> and Krishna Janmabhoomi<sup>22</sup>

Recently, in disputes pertaining to the Gyanvapi Mosque located at Varanasi and Krishna Janmabhoomi at Mathura, the courts have followed a cautious yet changing approach. Although they have shown respect to the restriction imposed by the Act, they have permitted a certain inquiry of facts, such as surveys and examinations, to ascertain the nature of the disputed properties.

A pertinent issue that emerges from the above developments is as follows: Does the Act really prohibit judicial intervention of any kind? The judicial trend seems to suggest a negative answer. It seems to be interpreting the Act in a manner that is consistent with its objective of maintaining the religious status quo and its constitutional duty of delivering justice.

<sup>19</sup> Ashwini Kumar Upadhyay v. Union of India, Writ Petition (Civil) No. 449 of 2020 (India).

<sup>20</sup> Anjuman Intezamia Masjid Committee v. Vishnu Shankar Jain, (2022) S.C.C. OnLine S.C. 570 (India).

<sup>21</sup> Anjuman Intezamia Masjid Committee v. Vishnu Shankar Jain, 2022 SCC OnLine SC 570 (India).

<sup>22</sup> Bhagwan Shri Krishna Virajman v. Shahi Idgah Masjid, Original Suit No. 712 of 2022 (Civil Judge (Senior Division), Mathura, India).

## VI. CRITICAL EVALUATION OF THE ACT-

The Places of Worship Act, 1991, is an enactment that is situated at the crossroads of two very conflicting constitutional principles: the need for communal harmony and the need for historical justice. It is a piece of legislation that, while being justified on the grounds that it is necessary for maintaining harmony in a religiously diverse nation like India, has also come in for severe criticism for its restrictive limitations on the search for justice. A proper assessment of the Places of Worship Act, 1991, thus necessitates an evaluation of its strengths and weaknesses.

On the one hand, the Places of Worship Act, 1991, is a very important piece of legislation that prevents any communal disturbances through its legal prohibition of the conversion of religious places and its freezing of the status quo as of 15<sup>th</sup> August, 1947. In a nation where religious identity is inescapably linked with social and political reality, any attempt to revisit old disputes has the potential for igniting a firestorm of civil disturbance. By putting a firm line on the nation's independence, the Places of Worship Act, 1991, aims for a nation that moves forward rather than being mired in the conflicts of the past. In this sense, it may also be seen as a stabilizing factor that contributes to the maintenance of public order and national unity.

Moreover, the Act also reflects the commitment to the principle of secularism that is a part of the basic structure of the Constitution. By protecting the religious character of all places of worship irrespective of the faith involved, the law aims at ensuring that all religions are treated equally. This also supports the notion that the State should remain neutral in matters of religion while at the same time ensuring that the balance between religions is not upset. In this sense, the Act may also be seen as one that aims at consolidating the secular nature of the nation.

Lastly, the Act also aims at providing clarity and stability in law by barring the institution of new suits and the termination of pending suits on the issue of the conversion of the religious character of places of worship. This is so because, in the absence of such a provision, the judicial system may become overwhelmed with litigation that may arise on the basis of contested historical narratives that may or may not be easy to prove.

However, despite all these advantages, the Act is also not free from serious criticisms. One of the main criticisms is that the Act perpetuates historical injustice by depriving communities from seeking judicial remedies for any wrongs that may have been perpetrated in the past. For many people, places of worship are not just physical structures; they also have a significant relationship with their cultural identity, faith, and history. By closing the doors on these claims, the Act may also be seen to have sacrificed justice for the cause of peace.

Another major criticism of the Act is the restriction placed on judicial remedies. Section 4(2) of the Act provides that courts shall not entertain any claims regarding the religious character of places of worship prior to 1947. This provision has also raised serious concerns regarding access to justice and the enforcement of fundamental rights. The right to approach the courts is a basic tenet of the constitutional framework, and any restriction on judicial review must therefore be carefully scrutinized. It has also been argued that such a restriction may undermine the role of the judiciary in protecting fundamental rights.

However, the exception granted to the Ayodhya dispute makes the constitutional validity of the Act even more complex. By imposing stringent restrictions on all the cases except the Ayodhya dispute, the Act has also introduced the element of arbitrariness. In the light of the aforementioned arguments, it is apparent that the Act, although not entirely justified, is also not entirely incorrect. It appears to be the result of the efforts of the legislative body to establish a balance between peace and justice.

It may be stated that the Act is the result of the constitutional compromise between peace and justice, although the sustainability of the same remains highly debatable.

It may be stated that the sustainability of the Act would be subject to the manner in which the balance between peace and justice is achieved, particularly by the judiciary.

## VII. CONCLUSION

The question of historical justice or contemporary harmony is at the heart of a constitutional conundrum posed by the Places of Worship Act, 1991. This is evident from the ongoing controversy regarding the Act. On one hand, it is argued that the Act is a much-needed measure, which protects society from the re-opening of contentious religious issues, thus preserving harmony and underlining the secular nature of the State. On the other, it is argued that it is a flawed measure, which places an inflexible bar on claims for historical justice, and thus denies communities the opportunity of seeking compensation for historical injustices.

However, the Places of Worship Act, 1991, brings the important question of the meaning of the term 'religious character' into focus. One way of interpreting this term could be in the context of the idea that "once a temple, always a temple." This idea supports the idea that some places of worship could be eligible for the reclaiming of their original characters.

However, the application of this idea in a general sense brings a whole host of problems with it. It would be neither practical nor desirable to try and reconvert the thousands of places of worship that are thought to have been changed over the years by the invaders in some way or another. This could lead to a Pandora's box situation, which the Places of Worship Act, 1991, seeks to avoid. A better approach might be to consider this idea in a very narrow sense, in a small number of particularly historically and culturally significant examples, as opposed to the general rule. Like Kashi dispute, Mathura dispute and Sambhal dispute may be created as exception.

The arguments on both sides are quite compelling. The need for stability in a multifaith society like India is not to be underestimated, especially when considering the historical tensions between different faiths. On the other hand, completely closing off avenues of legal action might, in the long term, prove problematic, as it could foster a sense of grievance, which, in turn, might undermine harmony. This is, of course, a general problem of balancing constitutional principles like secularism, equality, and access to justice.

It is within this context that it cannot be seen as an absolute and justified act or one which is fundamentally flawed. Rather, it must be seen as a calculated and deliberate choice by the government to favor peace over judicial review. Nevertheless, such a choice must always remain open to review and judicial interpretation to ensure that it does not unfairly restrict fundamental rights. It must be noted that, while the Act is a vital tool in maintaining communal harmony, its viability over a period of time must be seen as a more balanced and nuanced approach. This is one which continues to maintain the core objective of peace and stability while allowing a certain measure of judicial review.

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