

# THE NEEDLESS RESURRECTION OF A BURIED ISSUE

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

On November 9, 2019, the [Constitution Bench of the Supreme Court gave its judgment](#) in *M. Siddiq v. Mahant Suresh Das*, which is known as the Ram Janmabhoomi temple case. The Bench comprised Chief Justice Ranjan Gogoi and Justices S.A. Bobde, D.Y. Chandrachud, Ashok Bhushan and S. Abdul Nazeer. The record does not show who the author of the judgment was, so all the five judges can be said to have authored it. The judgment is an unequivocal expression of approval of [The Places of Worship \(Special Provisions\) Act, 1991](#). The Preamble of the Act reads: “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 on the 15th day of August, 1947, and for matters connected therewith or incidental thereto.” Section 5 [expressly exempts Ram Janmabhumi-Babri Masjid](#), situated in Ayodhya, from the Act.

After analysing the Act, the Supreme Court said: “The law imposes two unwavering and mandatory norms: (i) A bar is imposed by Section 3 on the conversion of a place of worship of any religious denomination or a section of a denomination into a place of worship either of a different section of the same religious denomination or of a distinct religious denomination. The expression ‘place of worship’ is defined in the broadest possible terms to cover places of public religious worship of all religions and denominations and; (ii) The law preserves the religious character of every place of worship as it existed on 15 August 1947. Towards achieving this purpose, it provides for the abatement of suits and legal proceedings with respect to the conversion of the religious character of any place of worship existing on 15 August 1947.”

Timeline: Babri Masjid-Ram Janmabhoomi dispute

The court said that the Places of Worship Act “protects and secures the fundamental values of the Constitution.” It further said, “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 court also emphatically held that “the Places of Worship Act is intrinsically related to the obligations of a secular state. It reflects the commitment of India to the equality of all religions. Above all, the Places of Worship Act is an affirmation of the solemn duty which was cast upon the State to preserve and protect the equality of all faiths as an essential constitutional value, a norm which has the status of being a basic feature of the Constitution.”

The court more pithily stated: “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 Hindu Explains | [What is the debate around the Places of Worship Act all about?](#)

The court took serious exception to the judgment of Justice D.V. Sharma of the Allahabad High Court wherein he had held, “Places of Worship (Special Provisions) Act, 1991 does not debar those cases where declaration is sought for a period prior to the Act came into force or for enforcement of right which was recognised before coming into force of the Act.” The Supreme Court declared that this is directly contrary to Section 4 of the Act.

Despite the fact that Ram Janmabhoomi-Babri Masjid was exempted from the Act, the Supreme Court expressed its anguish. It said, “On 6 December 1992, the structure of the mosque was brought down and the mosque was destroyed... The destruction of the mosque and the obliteration of the Islamic structure was an egregious violation of the rule of law.”

Yet, on March 12, 2021, the Supreme Court issued notice to the Central government on a petition that was filed challenging the validity of certain provisions of the 1991 Act. The petition seeks setting aside of Sections 2, 3 and 4 of the Act on the grounds that they “validate ‘places of worship’, illegally made by barbaric invaders.” The Bench consisted of Chief Justice S.A. Bobde and Justice A.S. Bopanna.

The petition is founded, inter alia, on the basis that, “From 1192-1947, the invaders not only damaged destroyed desecrated the places of worship and pilgrimage depicting Indian culture from north to south, east to west but also occupied the same under military power. Therefore, S. 4 is a serious jolt on the cultural and religious heritage of India.”

Also read | [Centre must reaffirm 1991 Act on places of worship: CPI\(M\)](#)

The Supreme Court’s order on issuing notice on this petition is deeply disturbing on many counts. Every argument being raised now was repelled by the five judges in their binding judgment in *M. Siddiq v. Mahant Suresh Das*.

Freedom of religion is guaranteed to all citizens under Articles 25 and 26 of the Constitution. The framers of our Constitution debated these Articles extensively. Tajamul Husain said, “As I said, religion is between oneself and his God. Then, honestly profess religion and practise it at home. Do not demonstrate it for the sake of propagating... If you start propagating religion in this country, you will become a nuisance to others... I submit, Sir, that this is a secular State, and a secular state should not have anything to do with religion. So I would request you to leave me alone, to practise and profess my own religion privately.”

Lokanath Misra strongly objected to the right to propagate religion by saying, “Sir, We have declared the State to be a Secular State. For obvious and for good reasons we have so declared...” H. V. Kamath warned, “...because Asoka adopted Buddhism as the State religion, there developed some sort of internecine feud between the Hindus and Buddhists, which ultimately led to the overthrow and the banishment of Buddhism from India. Therefore, it is clear to my mind that if a State identifies itself with any particular religion, there will be rift within the State.”

Also read | [3rd plea in Mathura court seeking removal of Shahi Idgah mosque near Lord Krishna birthplace](#)

Pandit Lakshmi Kanta Maitra said, “By secular State, as I understand it, is meant that the State is not going to make any discrimination whatsoever on the ground of religion or community against any person professing any particular form of religious faith... The great Swami Vivekananda used to say that India is respected and revered all over the world because of her rich spiritual heritage.”

T.T. Krishnamachari laid emphasis on the fact that “a new government and the new Constitution have to take things as they are, and unless the status quo has something which offends all ideas of decency, all ideas of equity and all ideas of justice, its continuance has to be provided for in the Constitution so that people who are coming under the regime of a new government may feel that the change is not a change for the worse.”

The 1991 law was enacted to assuage the feelings of the Hindus who had been seeking Ram Janmabhoomi for a long, long time and to reassure Muslims that other places of their worship existing on August 15, 1947 shall be protected. The court rightly gave a quietus to this burning issue. Hopefully that was final.

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To reassure Indian Muslims, the PM needs to state that the govt. will not conduct an exercise like NRC

**END**

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