

## LAW AND FAITH

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The Supreme Court's majority decision that it need not revisit a 1994 verdict (Ismail Faruqui) that observed a mosque is not an essential part of the practice of Islam, especially since it may have a bearing on the resolution of the deeply contested Ram Janmabhoomi-Babri Masjid issue. There is merit in the dissent of Justice S Abdul Nazeer, who has preferred that a larger bench examine the Ismail Faruqui judgment considering the constitutional importance and significance of the issues involved in the case.

The Ismail Faruqui verdict had become an issue of contention because it involved the acquisition of land in Ayodhya where the Babri Masjid stood. The Supreme Court, while ruling in favour of the acquisition, had addressed the question whether a mosque could be deemed essential or integral to the practice of faith. The essentiality doctrine was derived by a seven-judge bench of the Supreme Court in the Shirur Mutt case. It calls for a rigorous examination of religious texts and tenets before a practice is deemed essential and integral to a faith. This, the petitioners had argued, was not followed in Ismail Faruqui, which was decided by a five-member bench that discussed categories such as "particular" and "comparitive" significance of a site while ruling in favour of the acquisition of the Babri Masjid land. The court's conclusions in Ismail Faruqui, the petitioners argued, had influenced the Allahabad High Court which decided the Ayodhya title suits case in 2010. In his judgment, Justice Nazeer flags the following issues to be decided by a larger Bench. It must determine whether: a) an essential practice can be decided without a detailed examination of the beliefs, tenets and practice of the faith in question; b) the test for determining the essential practice is both essentiality and integrality; (c) Article 25, only protect belief and practices of particular significance of a faith or all practices regarded by the faith as essential. These questions are significant for they touch the core of the constitutional principles regarding equality of rights as we all as the practice of secularism in India. Interestingly, a three-judge bench of the apex court had a few days ago, in Sunita Tiwari, considered the issue relating to banning the practice of female genital mutilation or khatna or female circumcision or khafd to a larger Bench for an authoritative pronouncement because the practice is essential and integral practice of a religious sect.

The 2:1 judgment on Thursday sets the stage for the Supreme Court to rule on the politically fraught title suits case. The Court has made it clear that it intends to hear it as a titles dispute and stay clear of the faultlines of faith that had complicated the matter and made a resolution near-impossible. However, the fact remains that the matter is being adjudicated after a mob, mobilised and instigated by the Sangh Parivar and arguably with the connivance of the state, had pulled down the Babri Masjid, a 16th century mosque.

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