

THE PLACE OF WORSHIP ACT, 1991 : IOLATION OF THE BASIC STRUCUTE OF THE INDIAN CONSTITUTION.

DR. DIPAK DAS

Associate Professor Hidayatullah National Law University, Naya Raipur, Atal Nagar

Abstract: - This article is about the constitutional validity of the places of worship Act, 1991 hereinafter. A Public interest litigation was filed before Supreme Court of India earlier as [WP (c)] 619 of 2020, but the court issued notice later vide order of the Supreme Court dated March 26, 2021. Mr. Dushyant Dave, a senior advocate of apex court has challenged section 3 & 4 of the places of worship Act, 1991 praying for being unconstitutional and against the basic structure of the constitution.

INTRODUCTION

It is to mention that is case of Siddiq V. Mahant Suresh Das, Popularly known as Ram Janmabhoomi case hereinafter referred as case, the Supreme Court made observation with respect to the places of worship Act, 1991, through no application in respect of the provisions of the said Act was filed in the case cited above.

The observation so made by Supreme Court lacks any precedential value as section 5 of the Act clearly mentions that nothing in the Act shall apply to any suit, appeal or other proceedings relating to the place of worship i.e. Ramjanmabhoomi-Babri-Masjid located in Ayodhya of the State of Uttar Pradesh.

The Pith and substance of the Act of 1991 is deemed as ultravires the fundamental right under Article 32 of enforcement of such right since it bars the Jurisdiction of Supreme Court of India. In fact Article 32 can not be suspended except as otherwise stated in the constitution. It is to be noted that Article 32 has been stated as the very soul of the constitution by Dr. B.R. Ambedkar, who chaired the drafting committee of the constitution. Under such article, Supreme Court has the power to issue writs appropriate for enforcement of fundamental mental rights mentioned in the constitution in its part III.

The Act of 1991, has been appropriately named as an Act of colorable legislation. As the courts have held, 'you can not go indiuallly which you are not permitted to do directly. The apex court on various accessions held that in view of the constitutional scheme and the jurisdiction conferred on the Supreme Court under 226 of the constitution that the power of judicial review being an inseparable part of the basic structure of the constitution courts in respect of enforcement of fundamental rights.

The concept of faith, belief and worship have goal immense importance in pregnable and the same is Nuffield

by the enactment of the Act of 1991 in its present format. This concept are the also base of Articles 25 and 26 of the constitution so, to prohibit citizens from knocking the door of appropriate courts with regard to suit or any other proceedings to handover the land of any temple of essential significance such as Lord Rama in Ayodhya, Lord Krishna in Mathura or , Lord Shiva in Varanasi, is arbitrary, malafide and unreasonable in the context of the fundamental right to pray and perform religious rituals as per letter and spirit of these Articles. The intention of the Act of 1991 under Sec-5 i.e. exception available to the "Ramjanmbhumi matter, identifies the need and importance of resolution of such a controversy and settling long on-going disputes before the courts. But such an exception should be made for other two matters as stated earlier.

The exclusion of the Mathura and Varanasi disputes as additional exceptions from the Act of 1991, is totally not acceptable and against what has been confused by the people of India to the makers of the constitution, enshrined in the preamble that is part of basic structure of the constitution. The persons relying on the Act of 1991 to avoid the settle of disputes in Mathura-Varanasi have failed to anticipate the legal principle emanated in the Judgement of apex Court [in Ismail Forqui V. Union of India (1994, 6 SCC 360)], on the religious importance of mosques and temples. Even in Saudi Araba only Mecca and Media have been given religious protection from demolition and only authorized demolition is permitted.

Since the Judgement of apex court in [(1994) 6 SCC 360] holding a mosque as not the essential part of the practice of religion of Eslam and Namaz by Muslims may be offered any where like in open field, on the road, railway platforms or airports, then section 4 (1) of the Act declaring that 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, is no longer good law.

Thus, in the concluding part, it may be stated that we cannot open pandora's box and open the flood gates of re-

building all 40,000 temples which were demolished by Mughal rulers. Hence by the doctrine of causes missus, the apex court of India may is an appropriate case before it order that the number of exception in sec-5 of the places of worship Act, 1991, be three as an alternative reduction. The court under Article 142 of the constitution may pass an order to carry out for doing complete justice being in public interest, while upholding the constitution of India.

REFERENCE:

- (1) The constitution of India by V.N. Shukla.
- (2) An Act of Colorable legislation, an article by Dr. Subramaniam Swamy and Satya Sabharwal Published in the Hindu's editorial dated, April 2, 2021.