BLOGS

The Constitutionality of the Places of Worship Act, 1991 for CLAT 2023

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Introduction to the Constitutionality of the Places of Worship Act, 1991

The Preamble to the Act says that the Act is intended 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".

The three important elements of the object of the legislation are italicised above.

Important Issues:[i]

1. Whether Sections 2, 3 and 4 of the Places of Worship Act, 1991 violate Articles 14 and 15 of the Constitution? [Guarantee of equality, if violated]
2. Whether Sections 2, 3 and 4 violate Articles 25, 26 and 29 of the Constitution? [Secular fabric/ secularism, if violated]
3. Whether temples 'destroyed by invaders' remain temples under Hindu and Islamic personal law?

Details and Conclusion

The Act says that any place of public worship in existence on the day of our independence, i.e., 15 August 1947, will retain its religious character on that day, notwithstanding its history. While Section 3 says no the conversion of places of worship, Section 4 bars the filing of suits for such purposes of conversion. The intent of the Act is, hence, clear.

An additional ground of challenge emerges from the language of Section 4 of the Act—another plea states that the provision bars the right to judicial remedy.

A significant background of this Act contains the allegation that the Act is discriminatory against Hindus, Sikhs, Jains and Buddhists, given that India has had a prominent history of rule as well as

invasion by Muslim rulers. The petition states:

“If Ayodhya case would not have been decided, Hindus would have been denied justice. Hindus Jains Buddhists Sikhs are continuously paying homage to their places of worship…”[ii]

It also mentions the ‘Hindu law principle’: “Temple property is never lost even if it is enjoyed by strangers for years and even the King cannot take away property as deity is embodiment of God and is a juristic person, represents *Infinite, the timeless* and cannot be confined to the shackles of time.”[iii] Hence, a complete reading of the writ petition can give a fair idea of the objectives of the petition.

The petitioner states that they are seeking to remedy the historical wrongs committed and claims to a right to the correction of those wrongs, especially now that the country is independent. The religious undertones of the petition are evident and a discussion on the legality of the law is certain to mention important questions of law.

This petition and related laws shall be important for analytical legal exams like CLAT. Aspirants are requested to pay a good deal of attention to challenges of constitutionality of important laws.

References:

1. Writ Petition against the Act, available here: https://www.scobserver.in/wp-content/uploads/2021/10/Places_of_Worship_Act_WP.pdf (last accessed 20.07.2022)
2. The Act is available here: https://www.indiacode.nic.in/handle/123456789/1922?sam_handle=123456789/1362 (last accessed 20.07.2022)

[i] For reference, see https://www.scobserver.in/cases/ashwini-kumar-upadhyay-union-of-india-constitutionality-of-the-places-of-worship-act-case-background/ (last accessed 07.07.2022)

[ii] *Id.,* at p. 6

[iii] *Id.,* at p. 7

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