

Court's order and the ASI survey are flawed

In its judgment dated November 9, 2023, a Constitution Bench of the Supreme Court of India, comprising the Chief Justice of India (CJI), Ranjan Gogoi, and Justices S.A. Bobde, Dr. D.V. Chandrachud (as he was then), Ashok Bhushan, and S. Abdul Nasser interpreted the Places of Worship (Special Provisions) Act, 1991 in the case of *M. Siddiq (Dead) Through Legal Representatives vs Mahant Suresh Das and Ors.* (Ram Janamdhoomi temple case).

The Court gave a binding declaration of the law interpreting the Act, which, under the constitutional scheme, becomes the law of the land and binds all courts within the territory of India under Article 141 of the Constitution of India. Its decisions must be followed by all courts (even the top court) in subsequent cases following the Doctrines of "Precedent" and stare decisis. The rationale is that the law by which the citizens are governed should be fixed, definite, and known.

Constitutional basis to an assurance

The Preamble to the Act states: "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." The five judges who authored the judgment collectively in the Ram Janamdhoomi temple case defined the Act thus: "The law has been enacted to fulfill two purposes. First, it prohibits the conversion of any place of worship. In doing so, it speaks to the future by mandating that the character of a place of public worship shall not be altered. Second, the law seeks to impose a positive obligation to maintain the religious character of every place of worship as it existed on 15 August 1947 when India achieved independence from colonial rule."

"Place of worship" includes temple, mosque, gurudwara, church, monastery or any other place of public religious worship of any religious denomination or any section thereof, by whatever name called. The definition in the Act states "Conversion with its grammatical variations, includes alteration or change of whatever nature."

The Court further holds that "Section 3 enacts a bar on the conversion of a place of worship of any religious denomination or a section of it into a place of worship of a different religious denomination or of a different segment of the same religious denomination" and that "Section 4 preserves the religious character of the place of worship as it existed on 15 August 1947". The Court held that only a place of worship, "Commonly known as Ram Janam Bhumii Babri Masjid" stood exempted. The Justices declared, "The law imposes two unwaivering and mandatory norms: 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



Dushyant Dave
is a Senior Advocate
in the Supreme Court
of India.

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".

After noting the intention of Parliament, the Justices emphasised that "The Places of Worship Act which was enacted in 1991 by Parliament protects and secures the fundamental values of the Constitution". They held that "In providing a guarantee for the preservation of the religious character of places of public worship as they existed on 15 August 1947 and against the conversion of places of public worship, Parliament determined that independence from colonial rule furnishes a constitutional basis for healing the injustices of the past by providing the confidence to every religious community that their places of worship will be preserved and that their character will not be altered".

The Justices added, "The law speaks to our history and to the future of the nation. Cognizant as we are of our history and of the need for the nation to confront it, independence was a watershed moment to heal the wounds of the past. 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... that history and its wrongs shall not be used as instruments to oppress the present and the future."

Interestingly, the Justices emphatically disapproved the judgment of Justice D.V. Sharma of the Allahabad High Court against which they were hearing the appeals in which the judge had held that the "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 Justices held that "The above conclusion of D V Sharma, J. is directly contrary to the provisions of Section 4(2)", and that, "Section 4(2) specifically contemplates that all suits, appeals and legal proceedings existing on the day of commencement of the Places of Worship Act, with respect to the conversion of the religious character of a place of worship, existing on 15 August 1947, pending before any court, tribunal or authority shall abate, and no suit, appeal or proceeding with respect to such matter shall be after the commencement of the Act... Clearly, in the face of the statutory mandate, the exception which has been carved out by Justice D V Sharma runs contrary to the terms of the legislation and is therefore erroneous".

The Supreme Court's order on August 4, 2023 refusing to stay the order of the Allahabad High Court dated August 2, 2023 in the Anjuman Iteezamia Masjid Committee challenging the order of the Allahabad High Court which affirmed the order of the District and Sessions Court, Varanasi dated July 21, 2023 raises serious questions about its legality, propriety and justice. The Bench comprising CJI D.V. Chandrachud, Justice J.B. Pardiwala and Justice Manoj Misra, are, with the greatest respects,

completely wrong in allowing the Archaeological Survey of India (ASI) survey on the premise that the key question for any determination under the Act of 1991 is the religious character of a place of worship as it existed on August 15, 1947. The Bench has singularly failed to follow a binding precedent to which Justice Chandrachud himself was a party in the Ram Janamdhoomi temple case. There can be no doubt in anyone's mind that the Gyanvapi mosque has been a place of public worship for centuries for Muslims and, therefore, there is an absolute and total bar on changing its character in any manner, into a place of worship of a different religious denomination.

If the nature of the mosque is untouchable since it existed on August 15, 1947, then what purpose can an ASI inquiry be directed at? And what purpose can it achieve? The Court never allows or grants futile relief.

The Supreme Court has completely overlooked that the obligations under the Act were upon the state as also on every citizen of the nation and those who govern the affairs of the nation at every level were bound by it.

The Supreme Court is the ultimate custodian of constitutional values and morality. Applying the spirit of the judgment of Ram Janamdhoomi temple case, the three courts ought to have been extraordinarily mindful about the rights and feelings of the minority community. At a crucial time when elections are approaching, any majoritarian approach can create serious misgivings in the minds of sections of society.

Bigotry during parts of the Islamic period has always stood condemned; in fact that led to the rise of the powerful Marathas, Rajputs and Sikhs, resulting in overthrowing the Muslim empire.

The opening of a Pandora's box

The question now is this: how far do we go from here? Do we order such a survey for every mosque because claims will be made by people across cities and villages? Someone may even suggest that we dig up the Red Fort and the Taj Mahal. There is also a plea on the Court "praying for a scientific survey" of the Mathura mosque. The Supreme Court has opened a Pandora's box.

We must remember that while injustice was done to the Hindus by Muslim rulers, democratic India cannot perpetuate them to undo them. One can only remember that rulers like Akbar respected Hindus and allowed religious freedom to them. The Bhakti movement which produced some of the greatest saints such as Chaitanya, Surdas, Tulsiidas, Gopala Bhatt, Sanikardava, Eknath, Tukaram, Dada, Meera Bai, and Guru Nanak raised the status of non-Brahmins, especially Dalits amongst Hindus. In that sense, religion was democratised.

When history is written in future, there should not be any reference that the Hindus of the 21st century indulged in religious bigotry. For over 5,000 years Hinduism has been a way of life and one of the greatest religions marked by Liberalism, Tolerance and Absorption. Let us hope for peace and prosperity in our beloved India.

The Supreme Court of India's order in the Gyanvapi mosque case raises serious questions about its legality, propriety and justice

The rise and fall of a Russian warlord

On June 24 this year, Yevgeny Prigozhin, the leader of the Russian private military company, the Wagner Group, marched his troops to within 200 kilometres of Moscow, protesting against the Russian Defence Ministry. This was the most noteworthy challenge to the regime of Russian President Vladimir Putin ever since he took over power in 1999. The mutiny ended within a day with the intervention of Belarusian President Alexander Lukashenko. The Wagner Group was exiled to Belarus in exchange for criminal immunity.

Speculation, reactions, Putin's response

Two months later, Russian officials confirmed that Prigozhin had died in a plane crash near Moscow along with other top officials of Wagner, that included Dmitry Utkin, the co-founder of the group and a former military intelligence officer who was in charge of Wagner's operations, and Valery Chekalov, its security chief. Speculation is rife within Russia and abroad about who is responsible for the death of the popular leader (Prigozhin was often photographed with soldiers on the battlefield in sharp contrast to top officials in the Russian Defence Ministry). While the West has put the blame on Mr. Putin, the Kremlin has denied any responsibility and has launched an investigation.

Regardless of the results, Prigozhin's death would be welcomed by some and cause uneasiness in others in Russia. It strengthens Mr. Putin's hands, bolstering his image as a strong leader; his compromise with Prigozhin, whom he had described as a "traitor" after the mutiny had led to perceptions of him being weak and not in control. However, deeply aware of Prigozhin's popularity, Mr. Putin chose his words of condolence carefully: he hailed Prigozhin as a "talented businessman" who had "made some serious mistakes in his life". Mr. Putin is facing an



Uma Purushothaman

is Assistant Professor,
Department of
International
Relations, Central
University of Kerala,
Periyar, Kasargod,
Kerala

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election in March 2024 and he would be wary of hurting the sentiments of his electorate. In fact, there was speculation that Prigozhin himself had political ambitions.

His death would have come as a relief to the Russian Defence Minister, Sergei Shoigu and General Valery Gerasimov, chief of the General Staff of the Russian Armed Forces and First Deputy Minister of Defence, both of whom were criticised by Prigozhin for their conduct of the war and their poor leadership skills. Again, just before the plane crash, their rival, General Sergei Surovikin – he was a friend of Prigozhin's and was being investigated for having advance information about the Wagner mutiny – was removed from his post as the head of Russian aerospace force. Gen. Surokovin, or General Armageddon as he was known, was briefly in charge of Russian military operations in Ukraine, between October 2022 and January 2023. Therefore, Prigozhin's passing along with Surokovin's demotion is a shot in the arm for the two men, who are valued by Mr. Putin for their loyalty.

A patriot for the man on the street

Many ordinary Russian citizens saw Prigozhin as a patriot for his exploits in Ukraine, particularly because of Wagner's role in capturing Bakhmut; several makeshift memorials came up quickly across the country for them to mourn. The nationalists, who support the invasion of Ukraine but feel the war is not going as well as expected and want the war to be waged more aggressively, had cheered Prigozhin as a national hero for criticising the military, and will understandably grieve for him. The elites and the oligarchs, some of whom had sympathy for Prigozhin's march and are feeling the adverse impact of western sanctions, will see his death as another reminder of the regime's iron-clad hold on the state. For the

liberals, many of whom are in prison, the death only reinforces their perceptions about the regime's habit of punishing those who oppose it.

An instrument of Russian influence

Prigozhin's death will have little impact on the war in Ukraine because the Wagner group had pulled out of Ukraine a few weeks ago. Moreover, many members of the group have signed contracts with the Russian Defence Ministry. However, his death could affect the group itself because its top leadership has been wiped out now and the group does not have a clear leadership structure like traditional militaries do. So, it is uncertain who will take over.

However, it is possible that Mr. Putin will get someone more subservient to him to lead the group and strengthen his hold on it or even bring the group under the Defence Ministry or an intelligence agency. But this might not go down well with the Wagner mercenaries, many of whom are deeply loyal to Prigozhin. The Wagner Group will probably continue as a Russian proxy force in West Asia and Africa as it is an instrument of Russian influence abroad and has billions of dollars in assets in Africa. But in Africa, as the Wagner Group recoups from Prigozhin's death, there will be some respite for the French and the Americans, who have been fighting Russia's renewed influence in the region because of Wagner. The message to the rest of the world is that the regime in Russia remains stable despite the mutiny, despite Prigozhin's death and despite the sanctions.

Overall, therefore, Prigozhin's death will have little impact on Russian domestic politics or on Mr. Putin's influence. In fact, his death might enable Mr. Putin to exert greater control over the activities of the Wagner group. Otherwise, life will go on as usual in Russia. As will the protracted war in Ukraine.