



# Not by ordinance

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## **Not by ordinance-Proposals to hasten construction of a Ram temple at Ayodhya are extremely ill-advised**

- There is a clamour by the Rashtriya Swayamsevak Sangh (RSS) and Sangh Parivar for an ordinance and later a statute (i.e. Act) for building a Ram temple over the ruins of the Babri Masjid in Ayodhya immediately.
- The supposedly neutral Justice J. Chelameswar, who retired as a Supreme Court judge earlier this year, joined the fray, saying it was possible.

### **The Centre's remit**

- Any ordinance would have to be passed by the Central government if the President (as advised by Prime Minister Narendra Modi's cabinet) "is satisfied that circumstances exist which render it necessary for him to take immediate action" to promulgate an such an ordinance, which will cease if it is negated or lapses. If it lapses, re-promulgation can take place.
- Again, by brute strength an Act may be passed amidst upheavals and rancour throughout India.
- The alternative is a Private Member's Bill. Given the conflict of interest, the Central government is obliged to oppose it, albeit with a three-line whip.
- The State of Uttar Pradesh is bound by its stance in the Allahabad High Court that it is not interested in the site.
- Even if passed, any such statute would have to cross many hurdles.

### **Separation of powers**

- There is a well-known principle, emanating from the doctrine of separation of powers in the Constitution, that the legislative power of Parliament cannot usurp the judicial power to sit in appeal over the judicial decision-making - still less where the case is pending as a suit or

in appeal.

- As soon as the ordinance or Act is passed, it will be challenged in the Supreme Court because it is of national importance and affects the jurisdiction of the Supreme Court.
- Even if no stay is granted, the urgency of the matter may mean an assurance sought by the court that no precipitous steps would be taken during these new proceedings.
- There will be counter-clamour, protests, news that India favours Hindus over Muslims.
- The decision in the Ayodhya case will be delayed further.

### **A secular state?**

- With the rise of an uncompromising fundamentalism, India is faced with extreme populist demands against minorities and the rule of law.
- The Constitution is secular, but parts of civil society are rabidly communal.
- It is the Constitution that has pledged our diverse people together.
- It is not a plaything – still less in the hands of a motivated majoritarianism that puts 'India' to ransom.
- Muslim fundamentalism is allegedly terrorists, its violent elements banned.

The Hindu

