



# The dome to protect is the Constitution

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## **A crucial question in the Ayodhya matter concerns India's vision at independence**

- The Supreme Court recently referred the Ayodhya matter for mediation.
- Litigation over the Babri Masjid site and its environs has been pending for several years.
- As is well known, the Babri Masjid itself was demolished while litigation concerning it was pending.

### **The question of birthplace**

- In the late 19th century, a suit was pressed before the Sub-Judge, Faizabad by Mahant Raghubar Das against the Secretary of State.
- It sought permission to build a temple on a Chabutra, the mosque being located on one side of it.
- The suit was dismissed on December 24, 1885.
- In the Constituent Assembly, the question of the Ram Mandir at Ayodhya does not appear to have figured.
- The placing of idols under the central dome of the Masjid in December 1949 made the dispute intractable as it affected other rights.
- The focus shifted from the Ram Chabutra, where prayers used to be offered, to the central dome.
- These events took place in the interregnum between the adoption of the Constitution and its commencement.
- The perpetrators had apparently wished to influence decision-making at a crucial juncture in state-formation in India.
- Cultures would be on the same plane and all the people India was home to would be respected as equal denizens.
- This understanding was in conformity with the overall evolution of both the Indian national movement from 1885 onwards and the composite culture that had evolved over the centuries.
- It was reflected in the Constitution.
- Nearly a quarter century later, the Supreme Court, enunciating the

basic structure doctrine in Kesavananda Bharati (1973), referred in its adjudication also to the landmarks of the national movement and the objectives these had reflected.

## **The nature of India**

- The historical question about the nature of India that had emerged on independence was sought implicitly to be re-opened by some politicians who came to wield influence in the last few decades of the 20th century.
- One of them admitted that the Mandir movement was basically a political movement.
- Elements of the state and polity have also tended to exacerbate the problem.
- The Places of Worship (Special Provisions) Act, 1991 was enacted during Prime Minister Narasimha Rao's tenure.
- It sought primarily to maintain the character of religious places as these stood on August 15, 1947, but made a gratuitous exception under Section 5 for the "Ram Janma Bhumi-Babri Masjid".
- The exception reflected a weakening of political will as it budgeted for a possible transformation in the "Ram Janma Bhumi-Babri Masjid" site.
- On the face of it, the dispute may appear to be between private entities but is underpinned by a conflict between constitutional values and challenges to them.
- To be effective, any outcome that is approved by the court must also be accompanied by such a prior undertaking from the Centre.
- Disputes in which any party sees enduring political advantage are unlikely to be settled merely by mediation.
- The resolution depends not merely on a jurisprudential exercise but also on the political will to enforce a fair outcome.
- Since the dispute has in contemporary times gained traction for political reasons, the solution is unlikely to come wholly from a judicial forum, mediation or no mediation.
- The matter would perhaps resolve itself once a sober and informed public opinion is able to deliberate on whether, when India became independent, it did so after a couple of centuries or after a millennium.
- India's constitutional institutions gain their legitimacy and *raison d'être* from the first view.
- Ambiguities among some of these institutions and functionaries in recent decades have been sliding them towards the second view.
- The recent legislative initiatives on the Citizenship Act are the latest illustration of this.

- Clearly, the dome to be protected is the Constitution itself.

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