

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

I.A. NO. OF 2024

in

WRIT PETITION (CIVIL) NO. 1246 OF 2020

IN THE MATTER OF:

Ashwini Kumar Upadhyay

...PETITIONER

VERSUS

Union Of India & Ors.

...RESPONDENTS

AND IN THE MATTER OF:

Communist Party of India (Marxist)

...APPLICANT

through Mr. Prakash Karat, Member Politburo

PAPER-BOOK

[FOR INDEX KINDLY SEE INSIDE]

ADVOCATE FOR THE APPLICANT: ANAS TANWIR

INDEX

S. NO.	PARTICULARS	PAGE NOS.
1.	Application seeking Intervention with Affidavit	1 - 13
2.	Vakalatnama	14
3.	Proof of Service	15

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

I.A. NO. OF 2024

in

WRIT PETITION (CIVIL) NO. 1246 OF 2020

IN THE MATTER OF:

Ashwini Kumar Upadhyay

...PETITIONER

VERSUS

Union Of India & Ors.

...RESPONDENTS

AND IN THE MATTER OF:

Communist Party of India (Marxist)

...APPLICANT

through Mr. Prakash Karat, Member Politburo

APPLICATION SEEKING INTERVENTION

To,

The Hon'ble Chief Justice of India, and
His Companion Justices of the Supreme Court of India

The Application on behalf of
The Applicant above named;

MOST RESPECTFULLY SHOWETH:

1. This Application is being preferred by the above named Applicant, i.e. the Communist Party of India (Marxist) which is a National Party recognized by the Election Commission of India. It seeks intervention

in the above captioned proceedings which endeavour to challenge the validity of the *Places of Worship (Special Provisions) Act, 1991* (hereinafter referred to as the "**Act**").

2. This Application is being filed by the Applicant Party through its Member Politburo and Interim Coordinator of the Party, who has been authorised by the Applicant to intervene in these proceedings in this Hon'ble Court. The Party is interested in upholding constitutional fraternity and also secularism, equality, and the rule of law, which are principles enshrined in the Indian Constitution. The Applicant seeks intervention in this matter to highlight the constitutional and societal importance of the Act fearing that tinkering with it would harm India's communal harmony and secular fabric.
3. That the Applicant Party prefers this Intervention Application in order to present before this Hon'ble Court the need to dismiss the present Writ Petition on various grounds which *inter alia* include the grounds of secularism, equality and freedom of religion.
4. The Applicant herein seeks to impress upon this Hon'ble Court the significance of the Act in preserving public order, fraternity and integrity of the nation. The Applicant most humbly states that this Act, enacted in 1991, ensures that governance is forward-looking and not anchored in revisiting historical grievances. The Act embodied this principle by prohibiting the alteration of religious places of worship as they stood on 15 August, 1947. It prevents historical wrongs from being addressed by breaching the rule of law or urging the Courts to do so. It thus safeguards the country against religious strife and ensures adherence to constitutional morality.

5. It is submitted that the Act was passed against the backdrop of religious strife which was threatening to engulf the country pursuant to the *rath yatra* undertaken by Mr. L. K. Advani, then President of the Bharatiya Janata Party. It is pertinent to state that the *rath yatra* and the communal riots that followed pursuant to that political movement led to a loss of lives of thousands of Indian citizens. It was precisely to obviate the possibility of similar religious strife over various places of worship in India that the Parliament in 1991 enacted the Act.
6. It is pertinent to state that in the three succeeding decades despite the Governments having full parliamentary majorities, there has been no effort to amend or abrogate the Act. It is submitted that these proceedings are an indirect attempt to amend or abrogate the Act through judicial means where Parliamentary intention appears to be the contrary.
7. That the challenge to Sections 2, 3 and 4 of the Act is untenable in light of the *Doctrine of Laches*. The Petitioner has claimed a violation of his rights by the Act after an inordinate delay of over three decades after its enactment. The *Doctrine of Laches* is a legal principle disallowing a claim because it has been brought to Court after an unreasonable lapse of time.
8. That the challenge to Sections 2, 3 and 4 of the Act relies solely on facets of history that have been deliberately painted in communal color and is therefore an attempt at disrupting unity by stoking communal tensions between various communities.
9. That without lending credence to the rhetorical claims made in the Writ Petition, the purported grievances of the Petitioner concerning actions of ancient rulers cannot be adjudicated upon by this Hon'ble

Court nor do they constitute a valid basis to challenge the constitutionality of the Act. It is submitted that a petition under Article 32 assailing a legislative enactment must demonstrate the alleged unconstitutionality of its provisions grounded in established constitutional principles.

10. That the filing of suits challenging the nature of Mosques and Dargahs is a direct attack on the pluralistic lifestyle that has been witnessed for generations and is a gross attempt at writing off the hard work of the nation's forefathers in ensuring that independent India remained an everlasting mixture of cultures, races, religions and languages.
11. That the following Mosques and Dargahs have been disputed and are now subject to multiple suits filed by various parties across the nation, seeking rights to access and claiming them to be temples:
 - i. Khwaja Gharib Nawaz Dargah Sharif, Ajmer, Rajasthan
 - ii. Shahi Jama Masjid, Sambhal, Uttar Pradesh
 - iii. Gyanvapi Masjid, Varanasi, Uttar Pradesh
 - iv. Shahi Idgah Masjid, Mathura, Uttar Pradesh
 - v. Quwwat-ul-Islam Mosque, Qutub Minar, Delhi
 - vi. Jama Masjid and Dargah of Shaikh Salim Chishti, Fatehpur Sikri, Uttar Pradesh
 - vii. Teeley Wali Masjid, Lucknow, Uttar Pradesh
 - viii. Badruddin Shah Dargah, Baghpat, Uttar Pradesh
 - ix. Atala Masjid, Jaunpur, Uttar Pradesh

- x. Shahi Jama Masjid, Budaun, Uttar Pradesh
 - xi. Kamal Maula Mosque, Bhojshala Complex, Madhya Pradesh
 - xii. Bija Mandal Mosque, Vidisha, Madhya Pradesh
 - xiii. Jama Masjid, Bhopal, Madhya Pradesh
 - xiv. Baba Budangiri Dargah, Hosakaote, Karnataka
 - xv. Ladle Mashak Dargah, Karnataka
 - xvi. Pirana Dargah, Gujarat
 - xvii. Hazrat Shah Ali Dargah, Telangana
12. That the alarming proliferation of litigation challenging the religious character of various places of worship across the country, including Mosques and Dargahs, intends to destabilize the legislative intent and constitutional mandate enshrined in the Act. This relentless wave of litigation threatens to undermine the principles of secularism and the rule of law, which are foundational to the basic structure of the Constitution.
13. That rhetorical arguments predicated on a quest for retribution against perceived historical acts of former rulers cannot form the foundation of a constitutional challenge.
14. That a five-Judge bench of this Hon'ble Court in ***M. Siddiq (D) Thr. Lrs. v. Mahant Suresh Das & Ors. (2020) 1 SCC 1***, held that the Act imposes restrictions with respect to the nature of a place of worship belonging to any religious denomination such that it would retain its nature moving forward as it was found on 15 August, 1947. The Court iterated that:

80. The law imposes two unwavering and mandatory norms:

(i) 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 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; and

(ii) The law preserves the religious character of every place of worship as it existed on 15 August 1947. Towards achieving this purpose, it provides for the abatement of suits and legal proceedings with respect to the conversion of the religious character of any place of worship existing on 15 August 1947. Coupled with this, the Places of Worship Act imposes a bar on the institution of fresh suits or legal proceedings. The only exception is in the case of suits, appeals or proceedings pending at the commencement of the law on the ground that conversion of a place of worship had taken place after 15 August 1947. The proviso to sub-section (2) of Section 4 saves those suits, appeals and legal proceedings which are pending on the date of the commencement of the Act if they pertain to the conversion of the religious character of a place of worship after the cut-off date. Sub-Section (3) of Section 4 however stipulates that the previous two sub-sections will not apply to:

(a) Ancient and historical monuments or archaeological sites or remains governed by Act 24 of 1958 or any other law;

(b) A suit or legal proceeding which has been finally decided settled or disposed of;

(c) Any dispute which has been settled by the parties before the commencement of the Act;

(d) A conversion of a place of worship effected before the commencement of the Act by acquiescence; and

(e) Any conversion of a place of worship before the commencement of the Act in respect of which the cause of action would be barred by limitation.

15. That this Hon'ble Court in ***M. Siddiq (D) Thr. Lrs. v. Mahant Suresh Das & Ors. (Supra)*** also specified that the Act intended to secure the future of the country from communal conflicts. It was also stated that non-retrogression was a fundamental part of the Constitution with secularism at its core. It was held as follows:

82. *The Places of Worship Act which was enacted in 1991 by Parliament protects and secures the fundamental values of the Constitution. The Preamble underlines the need to protect the liberty of thought, expression, belief, faith and worship. It emphasises human dignity and fraternity. Tolerance, respect for and acceptance of the equality of all religious faiths is a fundamental precept of fraternity. This was specifically adverted to by the Union Minister of Home Affairs in the course of his address before the Rajya Sabha on 12 September 1991 by stating:*

"I believe that India is known for its civilization and the greatest contribution of India to the world civilization is the kind of tolerance, understanding, the kind of assimilative spirit and the cosmopolitan outlook that it shows... The Advaita philosophy...clearly says that there is no difference between God and ourselves. We have to realize that God is not in the mosque or in the temple only, but God

is in the heart of a person... Let everybody understand that he owes his allegiance to the Constitution, allegiance to the unity of the country: the rest of the things are immaterial."

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 law addresses itself to the State as much as to every citizen of the nation. Its norms bind those who govern the affairs of the nation at every level. Those norms implement the Fundamental Duties under Article 51A and are hence positive mandates to every citizen as well. The State, has by enacting the law, enforced a constitutional commitment and operationalized its constitutional obligations to uphold the equality of all religions and secularism which is a part of the basic features of the Constitution. The Places of Worship Act imposes a non-derogable obligation towards enforcing our commitment to secularism under the Indian Constitution. The law is hence a legislative instrument designed to protect the secular features of the Indian polity, which is one of the basic features of the Constitution. Non-retrogression is a foundational feature of the fundamental constitutional principles of which secularism is a core component. The Places of Worship Act is thus a legislative intervention which preserves non-retrogression as an essential feature of our secular values.

...

83. ... *The Places of Worship Act is intrinsically related to the obligations of a secular state. It reflects the commitment of India to the equality of all religions. Above all, the Places of Worship Act*

is an affirmation of the solemn duty which was cast upon the State to preserve and protect the equality of all faiths as an essential constitutional value, a norm which has the status of being a basic feature of the Constitution. There is a purpose underlying the enactment of the Places of Worship Act. 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 in no uncertain terms that history and its wrongs shall not be used as instruments to oppress the present and the future.

16. That this Hon'ble Court in **S. R. Bommai v. Union Of India 1994 SCC (3) 1** held that the convergence of various races in the Indian subcontinent birthed unrivalled diversity which despite its problems was navigated by *preaching the philosophy of accommodation and tolerance*. The Court held that:

29. Notwithstanding the fact that the words 'Socialist' and 'Secular' were added in the Preamble of the Constitution in 1976 by the 42nd Amendment, the concept of Secularism was very much embedded in our constitutional philosophy. The term 'Secular' has advisedly not been defined presumably because it is a very elastic term not capable of a precise definition and perhaps best left undefined. By this amendment what was implicit was made explicit. The Preamble itself spoke of liberty of thought, expression, belief, faith and worship. ... While granting to its citizens liberty of belief, faith and worship, the Constitution abhorred discrimination on grounds of religion, etc., but permitted

special treatment for Scheduled Castes and Tribes, vide Articles 15 and 16. Article 25 next provided, subject to public order, morality and health, that all persons shall be entitled to freedom of conscience and the right to profess, practice and propagate religion. Article 26 grants to every religious denomination or any section thereof, the right to establish and maintain institutions for religious purposes and to manage its own affairs in matters of religion. These two articles clearly confer a right to freedom of religion. ... These fundamental rights enshrined in Articles 15, 16, and 25 to 30 leave no manner of doubt that they form part of the basic structure of the Constitution.

...

151. *As stated above, religious tolerance and equal treatment of all religious groups and protection of their life and property and of the places of their worship are an essential part of secularism enshrined in our Constitution. We have accepted the said goal not only because it is our historical legacy and a need of our national unity and integrity but also as a creed of universal brotherhood and humanism. It is our cardinal faith. Any profession and action which go counter to the aforesaid creed are a prima facie proof of the conduct in defiance of the provisions of our Constitution. ...*

...

178. *... The concept of secularism of which religious freedom is the foremost appears to visualise not only of the subject of God but also an understanding between man and man. Secularism in the Constitution is not anti-God and it is sometimes believed to be a stay in a free society. Matters which are purely religious are left personal to the individual and the secular part is taken charge by the State on grounds of public interest, order and general welfare. The State guarantee individual and corporate religious freedom and dealt with an individual as citizen irrespective of his faith*

and religious belief and does not promote any particular religion nor prefers one against another. The concept of the secular State is, therefore, essential for successful working of the democratic form of Government. There can be no democracy if anti-secular forces are allowed to work dividing followers of different religious faith flying at each other's throats. The secular Government should negate the attempt and bring order in the society. Religion in the positive sense, is an active instrument to allow the citizen full development of his person, not merely in the physical and material but in the non-material and non-secular life.

...

197. Rise of fundamentalism and communalisation of politics are anti-secularism. They encourage separatist and divisive forces and become breeding grounds for national disintegration and fail the parliamentary democratic system and the Constitution. Judicial process must promote citizens' active participation in electoral process uninfluenced by any corrupt practice to exercise their free and fair franchise. Correct interpretation in proper perspective would be in the defence of the democracy and to maintain the democratic process on an even keel even in the face of possible friction, it is but the duty of the court to interpret the Constitution to bring the political parties within the purview of constitutional parameters for accountability and to abide by the Constitution, the laws for their strict adherence.

17. It is submitted that the Constitution of India and the Act are progressive documents evincing intent of the Indian nation to look forward to a nation built on equality, religious tolerance, and freedom from communal violence. The principle of fraternity and economic and social freedom are subserved by upholding the Act in its entirety and dismissing all claims in any Court which are filed in contravention of the provisions of the Act.

18. It is humbly submitted that the guarantees enshrined under Articles 14 and 25 of the Constitution mandate that religious denominations are precluded from initiating actions aimed at gaining access to or converting the nature of places of worship.
19. That the Applicant herein craves liberty to file written submissions/arguments, as considered necessary in the present case.
20. The present Application is bonafide and in the interests of justice.

PRAYER

It is most graciously prayed that this Hon'ble Court may be pleased to:

- A. Allow this Application seeking Intervention and permit the Applicant named hereinabove to assist as an intervenor in these instant proceedings.
- B. Pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

AND FOR THE ABOVE ACT OF KINDNESS THE APPLICANT AS IN DUTY BOUND SHALL EVER PRAY.

DRAWN BY:

Ebad Ur Rahman
Neha Singh
Advocates

FILED BY:



ANAS TANWIR

Advocate-on-Record for the Applicant

FILED ON: 09.12.2024

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

I.A. NO. OF 2024

in

WRIT PETITION (CIVIL) NO. 1246 OF 2024

IN THE MATTER OF:

Ashwini Kumar Upadhyay

...PETITIONER

VERSUS

Union of India & Ors.

...RESPONDENTS

AND IN THE MATTER OF:

Communist Party of India (Marxist)
through Mr. Prakash Karat, Member Politburo

...APPLICANT

AFFIDAVIT

I, Prakash Karat, aged about 76 years, S/O C.P. Nair, Member Politburo, having my office at A. K. Gopalan Bhawan, 27-29 Bhai Vir Singh Marg, New Delhi - 100 001, do hereby affirm and state as follows:

1. That I am the Polit Bureau Member of the Communist Party of India (Marxist) and the Applicant in the above captioned Intervention Application and am fully conversant with the facts and circumstances of the present case. I am competent to depose this present Affidavit.
2. That I have read and understood the content of the accompanying Intervention Application and state that the averments therein are true and correct to the best of my knowledge and belief.
3. That the Annexures attached to the above captioned Intervention Application are true copies of their respective originals.

Prakash Karat
DEPONENT

VERIFICATION

Verified at New Delhi on this day of December 2024 that the contents of this Affidavit are true and correct to my knowledge and belief, and nothing material has been concealed therefrom.

Prakash Karat
DEPONENT



09 DEC 2024

ATTESTED
NOTARY PUBLIC DELHI
Govt. of India
Mob.: 9864788488

Mr. Anas Tanwir
Adv.
UP/4880/2012

IDENTIFIED

In the Supreme Court of India

CIVIL / CRIMINAL / ORIGINAL / APPELLATE JURISDICTION

~~Special Leave Petition (Civil)/(Criminal) No. _____ of 2024~~Writ Petition (Civil)/(Criminal) No. 1246 of 2020~~Civil/Criminal Appeal No. _____ of 2024~~**ASHWINI KUMAR UPADHYAY**

Appellant(s)/

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)/

Prakash Karat, S/O C.P. Nair, having my office at A. K. Defendant(s)

I/ We, **Gopalan Bhawan, 27-29 Bhai Vir Singh Marg, New Delhi - 01** Appellant
(s)/ Petitioner (s)/ Respondent (s) in the above Suit/ Appeal/ Petition/ Reference do
hereby appoint and retain


ANAS TANWIR**Advocate-On-Record****A-30, LGF, Nizamuddin East, New Delhi - 13.**

to act and appear for me/ us in the above Suit/ Appeal/ Petition/ Reference and on my/ our behalf to conduct and prosecute (defined) the same and all proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein including proceedings in taxation and Application for REVIEW to file and obtain of return documents and to deposit and receive money on my/ our behalf in the said Suit/ Appeal/ Petition/ Reference and in Application for Review, and to represent me/ us and to take all necessary steps on my/ our behalf in the above matter. I/ We agree to ratify all acts done by the aforesaid Advocate in pursuance of this Authority.

Dated this the 09 day of December, 2024.


Advocate

AOR Code: 2963

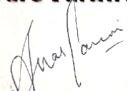

Appellant(s)/ Petitioner(s)/
Respondent(s)/ Caveator**MEMO OF APPEARANCE**

The Registrar,
Supreme Court of India
New Delhi

Please enter an appearance for the above named appellants/petitioners/respondents/ in the mentioned petition/case/ appeal/matter.

Date:

Yours Faithfully


Supreme Court of IndiaCC. No. 2963

Subject: Intervention Application in W.P.(C) No. 1246/2020 on behalf of Communist Party of India (Marxist)

From: Ebad Ur Rahman <ebad@chambers32.in>

Date: 12/9/2024, 2:28 PM

To: ashwanik.advocate@gmail.com, aksnaji@gmail.com, fuzail.ayyubi@gmail.com, shariqcounsel2005@gmail.com, adv.bijan.ghosh@gmail.com, emaqbool@gmail.com, gunturpramodkumar@gmail.com, advadubey@gmail.com, aor@kmnplaw.com, ujjwal@ujjwalsingh.in, sugandha.anand84@gmail.com, chambers@yashsvijay.com, dhawaluniyal99@gmail.com, tyagi.bharti@gmail.com, atuleshanant@gmail.com, aoradityasharma@gmail.com, shivsagar.advocate@gmail.com, sgsclawyer007@gmail.com, nirmalambastha@gmail.com, kabir.dx@gmail.com, advocate.rakesh17@gmail.com

CC: Anas Tanwir <anastanwir@gmail.com>

Kindly find attached the Intervention Application in W.P.(C) No. 1246/2020, filed on behalf of the Communist Party of India (Marxist) through Mr. Prakash Karat, Member Politburo.

Regards,

Ebad Ur Rahman

Associate | Chambers 32

Email: ebad@chambers32.in

Contact No.: +91 93817 33264

Goa: LG 158, Housing Board Colony, Alto-Betim, Porvorim, Goa, India - 403 521.

New Delhi: A-30, LGF, Nizamuddin East, New Delhi, India - 110 013.

The contents of this email are confidential and intended only for the recipient specified. It is strictly forbidden to share any part of this mail with any third party, without written consent of the sender. If you received this email in error, please notify us immediately at contact@chambers32.com and follow with its deletion. Any disclosure or copying of this mail is unauthorized.

Please do not print this email unless necessary.

— Attachments: —

Intervention Application - AKU v. UOI - CPI(M).pdf

6.3 MB