

IN THE HON'BLE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A. NO _____ OF 2025

IN

WRIT PETITION (CIVIL) NO. 1246 OF 2020

IN THE MATTER OF

ASHWINI KUMAR UPADHYAY

.... PETITIONER

VERSUS

UNION OF INDIA AND ORS.

....RESPONDENTS

AND IN THE MATTER OF

INDIAN NATIONAL CONGRESS

....INTERVENOR/

APPLICANT

AN APPLICATION SEEKING INTERVENTION

ADVOCATE FOR THE APPLICANT: ABISHEK JEBARAJ

INDEX

S. No.	Particulars	Page No
1.	Application seeking intervention with Affidavit	1 – 10
2.	Vakalatnama	11

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A National Party, recognized by

APPLICANT

The Election Commission of India,

Represented through its General Secretary,

Shri K.C. Venugopal

Having registered headquarters at,

24, Akbar Road, New Delhi-110001

APPLICATION SEEKING INTERVENTION

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA, AND

HIS COMPANION JUSTICES OF THE SUPREME COURT OF INDIA

THE HUMBLE PETITION
OF THE ABOVE APPLICANT

MOST RESPECTFULLY SHOWETH THAT:

1. The present Application is preferred by the Applicant seeking the leave of this Hon'ble Court to intervene in the proceedings of the captioned Petition, bearing W.P. (Civil) No. 1246 of 2020. The said petition currently pending adjudication before this Hon'ble Court, challenges the validity of Sections 2, 3 and 4 of the Places of Worship (Special Provisions) Act, 1991 (hereinafter referred to as "**POWA**").
2. The Applicant, a recognized National Party, is the oldest functioning political party of the country and is currently the principal opposition party in Parliament. The Applicant has since its inception has fought for the rights and welfare of the Indian populace. Through its nearly 139 years of history, the Applicant has actively taken steps to represent and work towards the betterment of all sects of Indian society. The Applicant has been at the forefront of social, political and cultural reforms that have taken place in the country. The Applicant humbly seeks the leave of this Hon'ble Court to intervene in the matter so that it may place on record submissions that would aid this Hon'ble Court in deciding the matter.
3. It may be relevant to mention that at the time of the passing of the POWA, it was the Applicant along with the Janata Dal party that were in the majority in the legislature for the 10th Lok Sabha. The Applicant humbly submits that the POWA was enacted by the Parliament , as it reflected the mandate of the Indian populace. In fact, the POWA had been envisaged prior to the year 1991 and the same was made a part of the Applicant's then Election Manifesto for the Parliamentary elections.
4. The POWA is essential to safeguard secularism in India and the present challenge appears to be a motivated and malicious attempt to undermine established principles of secularism.
5. The Applicant seeks to intervene in this matter to emphasize the constitutional and societal significance of the POWA, as it apprehends that

any alterations to it could jeopardize India's communal harmony and secular fabric thereby threatening the sovereignty and integrity of the nation. The Applicant stands committed to the principles of secularism, and some of its past contributions in preserving secularism has been succinctly summarised by the Hon'ble Delhi High Court in the case of *Suresh Chandra v. Union of India* [1975 SCC OnLine Del 24], wherein it was observed that:

"7....The evolution of the concept of secularism in modern India has a very different background. Inspired by the spirit of toleration and liberalism which characterised the Hindu thought from ancient times, the Indian National Congress developed a non-communal approach in politics leaving religion as being a matter of the conscience of the individual. The secularism in India developed as a part of nationalism and Freedom Movement which assured protection to the minorities and neutrality of the State in regard to all religions."

6. Notwithstanding that the present petition appears to have been filed with oblique and questionable motives, the Applicant seeks to oppose the present challenge to Sections 2, 3, and 4 of the Act, on the grounds that the POWA plays a pivotal role in furthering the right to freedom of religion and protects secularism, which is an established basic feature of the constitution. The instant petition challenges a legislation that both in form and substance safeguards fundamental rights and the basic features of the Constitution of India, including but not limited to secularism and fraternity. In such view, the Applicant seeks to make crucial submissions that support the outright dismissal of the present petition and accordingly humbly seeks to intervene on the following counts.
7. Firstly, the primary ground of challenge herein is the lack of legislative competence of Parliament in enacting the POWA. Since the Applicant, through its elected members were responsible for the introduction and passage of the POWA, the applicant may be allowed to intervene and defend the legal validity of the passage of the POWA.

8. Secondly, it is contended that since Article 13 bars Parliament from enacting laws in contravention of fundamental rights, Parliament was incompetent in enacting the POWA. The said contention is patently flawed for the reason that POWA is not in contravention of any fundamental rights enumerated in part III of the Constitution. To the contrary, the POWA actualizes the right to freedom of religion and principles of secularism enshrined in Articles 25, 26, 27 and 28 of the Constitution.
9. Further, the Petitioner's contention that the POWA is violative of the fundamental right to freedom of religion and the basic tenets of secularism is also legally flawed. To the contrary, a constitutional bench of this Hon'ble Court, while deciding the case of *M. Siddiq v. Mahant Suresh Das* [(2020) 1 SCC 1] [*The Ayodhya Dispute*] held that,

“103. 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.”

10. The present petition also erroneously states that the POWA is discriminatory as it is applicable only towards members of the Hindu, Sikh, Jain and Buddhist communities. A bare perusal of the POWA shows that it promotes equality amongst all religious groups and does not accord special treatment

towards specific communities as alleged by the Petitioner. It is equally applicable towards places of worship of all religious groups and ascertains and affixes their nature as on 15.08.1947. In fact, Section 2(c) of the POWA categorically defines “place of worship” as *“a 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”*. Therefore, it is submitted that the Petitioner’s claim that preferential and discriminatory treatment is accorded towards particular communities is without any merit.

11. Further, the POWA does not contravene any provisions of Part III of the Constitution as contended in the captioned Writ Petitioner. It is a settled principle of law that the constitutionality of any statute is presumed and that the burden to prove that a statute or any part thereof, is unconstitutional lies solely on the one alleging unconstitutionality. The captioned Writ Petition fails to establish even a prima-facie case that Parliament lacked legislative competence in enacting the legislation or that any of the rights listed in Part III of the Constitution stand violated.
12. The contention in the captioned Writ Petition that Parliament was incompetent to legislate the POWA as the contents of the said statute relate to a state subject under List II as per Article 246 is also errant and lacks merit. It is contended that Parliament is incompetent to enact the POWA on the grounds that its contents relate to “pilgrimage” which would fall under a state subject [Entry – 7, List – II, 7th Schedule]. However, the POWA specifically only deals with the protection of the character of places of worship as they stood on 15.08.1947. It is therefore humbly submitted that Parliament had complete authority and legitimacy to enact the POWA, as the pith and substance of the POWA falls squarely under Entry 28 of List III of the 7th Schedule under the head “Charities and charitable institutions, charitable and religious endowments and religious institutions”.

13. Notwithstanding the above, it is also submitted that places of worship cannot be construed to be solely a state subject merely because “pilgrimage” falls under the state list. As per the contentions of the Petitioner, the fundamental rights of the Hindu, Sikh, Jain and Buddhist communities enshrined under Article 26 are being violated as Article 26(a) grants the right to a religious community to establish and maintain “institutions for religious and charitable purposes”. The captioned Writ Petition is in itself contradictory as one hand it is alleged that the POWA violates provisions of Article 26, which deal with religious institutions and on the other it is alleged that places of worship cannot be a “religious institution” under Entry 28 of List III of the 7th Schedule. Such contradictory arguments are wholly in violation of the doctrine of approbate and reprobate.
14. It is the Applicant’s submission that the POWA is essential in order to allow for communal harmony and to promote cordial relations amongst all communities in the country. This position finds support in this Hon’ble Court’s reference in *M. Siddiq v. Mahant Suresh Das* [(2020) 1 SCC 1] to the parliamentary debates at the time of the legislation’s passage wherein one of the then members who supported the passage of the legislation is quoted as under: m

“.. considering all the aspects prevailing in this country, taking the cultural heritage and the background of this great nation, the culture we have emulated and evolved from the Vedas and Upanishads of this country, and valuing the greatness of the human beings, our leader Shri Rajiv Gandhi rightfully thought that a bill has to be introduced,' a legislation has to be brought in this country, to protect the places of worship." The Minister further stated that, " This is a country where the messenger of peace was assassinated,' this is a country where peace-loving persons had to die for a cause of the nation,' this is a country where Lord Buddha sacrificed his kingdom and everything for restoring peace and harmony among people. In such a country of ours, the Constitution of

India rightfully laid down Articles 23, 24, 25, 26 and so on.

Especially Article 26 emphasizes that the religious right of everyone to follow one's own religion and the right to maintain the religious places of worship should be protected."

15. This Hon'ble Court has on multiple occasions held that the focus of the nation must be towards the future and not at attempting to rectify the atrocities of the past. In fact, the importance of upholding the preambular values of fraternity and secularism was reiterated by this Hon'ble Court while dismissing a Public Interest Litigation captioned *Ashwini Kumar Upadhyay v. Union of India [W.P. (C) No. 190 of 2023]*, filed by the Petitioner herein. This Hon'ble Court observed as under:

"11. The history of any nation cannot haunt the future generations of a nation to the point that succeeding generations become prisoners of the past. The golden principle of fraternity which again is enshrined in the preamble is of the greatest importance and rightfully finds its place in the preamble as a constant reminder to all stakeholders that maintenance of harmony between different sections alone will lead to the imbibing of a true notion of nationhood bonding sections together for the greater good of the nation and finally, establish a sovereign democratic republic. We must constantly remind ourselves that courts of law, as indeed every part of the 'State', must be guided by the sublime realisation, that Bharat is a secular nation committed to securing fundamental rights to all sections as contemplated in the Constitution.

12. We are, therefore, of the view that the reliefs which have been sought for should not be granted by this Court acting as the guardian of fundamental rights of all under Article 32 of the Constitution of India and bearing in mind the values which a Court must keep uppermost in its mind - the preamble gives us clear light in this direction."

16. In view of the above, the Applicant herein craves leave of this Hon'ble Court to file written submissions and adduce arguments as and when required by this Hon'ble Court. The Applicant is a necessary and proper

party as it wishes to contest and oppose the prayer on the grounds enumerated above.

17. The present Application has been preferred bona fide and in the interests of justice.

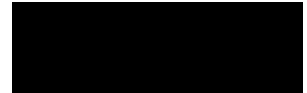
PRAYER

In light of the peculiar facts and circumstances stated herein above, it is most humbly prayed that this Hon'ble Court may graciously be pleased to:

- A. Allow the present application and permit the Applicant to intervene in Writ Petition (Civil) No. 1246 of 2020; and
- B. pass any such further orders and/or directions that this Hon'ble Court may deem fit and proper in the interests of justice.

AND FOR THIS ACT OF KINDNESS, THE APPLICANT AS IS DUTY BOUND SHALL EVER PRAY.

FILED BY:



ABISHEK JEBARAJ

ADVOCATE FOR THE INTERVENOR/APPLICANT

DATE: 16.01.2025

NEW DELHI