Act of Colourable Legislation

CLICK HERE FOR PART -1

Why in news?

Recently PIL challenging the provisions of the Places of Worship Act, 1991 was filed in the Supreme Court.

What is the PIL about?

- It says that the act of 1991 is against the fundamental rights enshrined in the Constitution since it bars the jurisdiction of the Supreme Court.
- It nullifies the fundamental rights guaranteed by the Constitution of India as explained in Article 32.
- Article 32 states that enforcement of fundamental rights cannot be suspended except as otherwise stated in the Constitution.

Why Article 32 is important?

- Earlier B.R. Ambedkar asserted that Article 32 is the very soul of the Constitution and the most important Article in the Constitution.
- It is under this article Supreme Court issues writs for appropriate enforcement of all the fundamental rights conferred by Part III of the Constitution.
- On various instances, the apex court ruled that the power of judicial review is an integral part of the basic structure of the Constitution.
- It also said that no act of Parliament can exclude or curtail the powers of the Constitutional Courts with regard to the enforcement of fundamental rights.
- Therefore the Act of 1991 is appropriately called an Act of colourable legislation and court held that "you cannot do indirectly which you are prohibited from doing directly".

What are the other provisions the act weakens?

- The Preamble in the Constitution gives prominent importance to liberty of belief, faith and worship to all citizens and the act has weakened, effectively nullified and severely damaged it.
- The concepts of faith, belief and worship are the foundations of Articles 25 and 26 of the Constitution of India.

- Therefore, prohibiting citizens from approaching appropriate courts to handover the land of any temple of certain essential significance is arbitrary and unreasonable.
- It goes against the fundamental rights to pray and perform religious practice as guaranteed by Articles 25 and 26 of the Constitution of India.

Source: The Hindu

