Demand for Ordinance – Ayodhya dispute

What is the issue?

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There are rising demands to hasten construction of a Ram temple at Ayodhya through an ordinance route and it is extremely ill-advised.

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Why an ordinance route is ill-advised?

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- Article 123 of the constitution empowers the president to promulgate ordinances during the recess of parliament.
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- It has been vested in him to deal with unforeseen or urgent matters and only when he is satisfied that circumstances exist which render it necessary for him to take immediate action.
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- In the Babri Masjid case, the Supreme Court made it clear that the government is only a receiver of the land it had acquired in Ayodhya.
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- It holds the land in trust, only to be handed over to the party that succeeds in the suit.
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- Thus, the Central government as statutory receiver cannot pass such an ordinance as it creates an immediate conflict of interest.
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What are the other legal hurdles?

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- According to the Places of Worship (Special Provisions) Act of 1991, the cut-off date for freezing the religious character of a place of worship is August 15, 1947 and all suits regarding their status would abate.
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- Section 6 of this act prescribes punishment of up to three years or fine or both if this is violated.
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- However, Section 5 of the Act provided exception to any suit or appeal related to Ram Janma Bhumi-Babri Masjid site.
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- But this does not pave the way for simply repealing the section, for that would give further protection to the Muslim case.
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- According to the Acquisition of Certain Area at Ayodhya Act, 1993, the Supreme court vested the disputed property in Central government which was re- interpreted in Ismail Faruqui v. Union of India (1994) case.
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- Thus, any legislative action would violate this status quo and the Central government has the responsibility to wait for the result of the suits filed in SC.
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- No ordinance or statute can sit in appeal on the Ismail Faruqui judgment of 1994.
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What should be done?

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- The legislative power of Parliament cannot usurp the judicial power where the case is pending as a suit or in appeal, which was affirmed in the Shri Prithvi Cotton Mills (1969) case.
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- It will violate the separation of powers as provided under Article 50, which is protected under the 'Basic structure' doctrine.
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- The right to adjudicate cannot be taken away as it would be discriminatory if applied only to a particular case to take away a valuable right.
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- Thus, any immediate solution for the Ram temple movement should be a judicial remedy which is so far followed in this case.
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Source: The Hindu

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