



## Special no longer

**Bottom Line:** China is keener on tightening its grip on Hong Kong than on widening democratic space.

### Highlights:

1. Hong Kong, China's Special Administrative Region (SAR), has served as the mainland's most important gateway to the world for the past 24 years. Since its handover from British rule in 1997, the SAR has defied expectations that it would lose its unique identity.
2. Unlike the mainland, the unique "one country, two systems" model guaranteed a high degree of autonomy and freedoms, including a free press, the right to protest, and a rambunctious political scene with a noisy pro-democracy opposition.
3. Perhaps, most importantly, for the hundreds of multinationals, it also enjoyed an independent judiciary, a stark contrast from the Communist Party-controlled courts across the border. This week, Beijing dealt a blow to many of those unique freedoms.
4. Recently, China's National People's Congress (NPC), approved sweeping changes to Hong Kong's electoral system that will reduce significantly the share of directly elected representatives in the SAR's Legislative Council (LegCo).
5. President Xi Jinping signed orders to promulgate amended annexes to Hong Kong's Basic Law, the constitution that has governed the SAR and ensured its autonomy, marking the biggest change since 1997.
6. While previously 35 of LegCo's 70 members were directly elected, that number has now been reduced to 20, even as the size of the legislature has been expanded to 90. The remaining 70 will be nominated from broadly pro-establishment groups, thereby ensuring a majority for the pro-Beijing camp in perpetuity.
7. The most controversial change is the establishment of a Candidate Eligibility Review Committee to decide the eligibility of candidates and deem whether they are "patriotic" enough. Its verdicts cannot be challenged in the courts, the only standing independent institution.



The protesters in 2019-2020 had demanded universal suffrage, promised in the 1997 handover. However, With the new change and the national security law in place, Beijing's grip on Hong Kong is tighter than ever.

## An Act of colourable legislation

Section 4 (1) of the Act declaring that the religious character of a place of worship existing on the 15th day of August 1947 shall continue to be the same as it existed on that day.

### Issues with Place of Worship (Special Provisions) Act of 1991

1. The pith and substance of the Act of 1991 are that it is ultra vires the fundamental rights enshrined in the Constitution since it bars the jurisdiction of the Supreme Court and furthermore nullifies the Fundamental Right(s) guaranteed by the Constitution of India as elucidated in Article 32 of "enforcement of fundamental rights" which cannot be suspended except as otherwise stated in the Constitution.
2. Under Article 32 of the Constitution of India, the Supreme Court has the power to issue writs appropriate for enforcement of all the Fundamental rights conferred by Part III of the Constitution.
3. The top court, on various instances, ruled that in view of the constitutional scheme and the jurisdiction conferred on the Supreme Court under Article 32 and on the High Courts under Article 226 of the Constitution that "the power of judicial review being an integral part of the basic structure of the Constitution, no Act of Parliament can exclude or curtail the powers of the Constitutional Courts with regard to the enforcement of fundamental rights".

The Act of 1991, is appropriately called an Act of colourable legislation. As the Courts have held, "you cannot do indirectly which you are prohibited from doing directly".

### A weakening

1. The Preamble in the Constitution gives prominent importance to liberty of belief, faith and worship to all citizens, and the same is sought to be weakened and effectively nullified or severely damaged by the enactment of the Act of 1991 in its current format.



2. 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 with respect to suit or any other proceedings to handover the land of any temple of certain essential significance (such as being the birthplace of Lord Rama in Ayodhya and Lord Krishna in Mathura or Lord Shiva sending his fiery Jyotirlinga in the Gyanvapi premises of Varanasi), is arbitrary, unreasonable and mala fide in the context of the fundamental rights to pray and perform religious practice as guaranteed by Articles 25 and 26 of the Constitution of India.
3. The intent of the Act of 1991 under Section 5, i.e. exception extended to the “Ram-Janmbhoomi matter” identifies the need and importance of resolution of such controversy and settling long on-going disputes before the courts. But such an exception should be made for the other two matters of dispute stated above.

### Other disputes

1. The exclusion of the Mathura and Varanasi disputes as being additional exceptions from the Act of 1991 is wholly unacceptable and against what is given by the people of India to the makers of the Constitution, enshrined in the Preamble, which is part of the Basic Structure of the Constitution.