

MAKING SENSE OF  
**AYODHYA  
VERDICT**

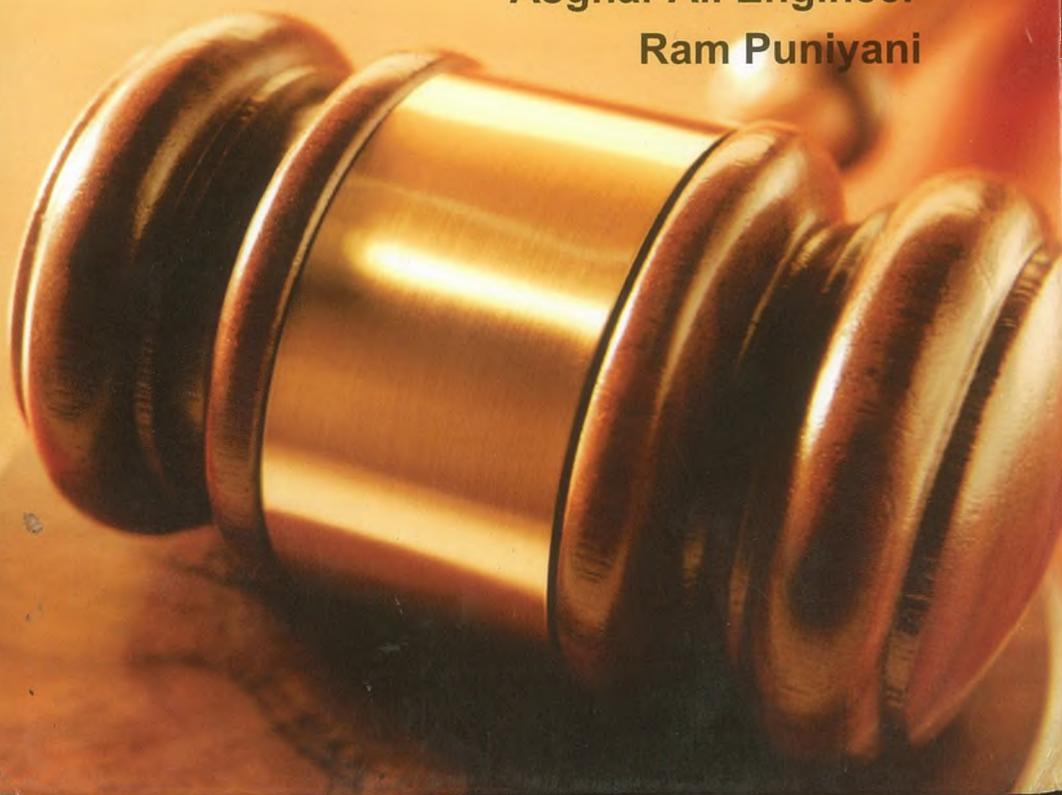


**Towards Efforts for  
Peaceful Solution**

Editors

**Asghar Ali Engineer**

**Ram Puniyani**



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**AYODHYA VERDICT**  
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## Preface

The Ramjanmabhumi-Babri Masjid issue proved to be much contentious one for about a decade in Indian politics, thanks to BJP and its politics of mobilizing Hindu votes. It fractured and polarized Indian voters along religious lines as never before. The BJP used it for winning elections and never tried to build the temple once it came to power. Also, the judicial processes are so tardy in our country that despite great urgency it never delivered its judgement on time.

And when judgement came in September 2010, it proved to be most controversial as it trifurcated the controversial land, one part going to Muslims for building the mosque and two parts were distributed among two Hindu parties. The result was that all three parties which were in the court were not satisfied with the judgement and people at large, except for a small section, expressed its dissatisfaction with it.

A spate of articles with varied points of view appeared in the Press. Since the issue was a historic one and a great challenge to our secular democracy in post-independent India, we thought it fit to compile these articles and the summary of the judgement in this book for future reference.

This book is expected to be useful for researchers and academics of this and the future generations. The articles have been selected carefully so as to represent different viewpoints of historians, political scientists, lawyers, journalists and peace activists. It covers a broad range

of people. The idea is not to uphold this or that point of view but to make available as much material on the subject as possible to facilitate further research. We have left it to the researchers and academics to form their own judgement. While the compilers of this volume have their own points of view, they have not allowed their viewpoint to influence selection of articles.

We are extremely thankful to writers and activists whose articles have been included in this volume. Our thanks is also due to various publications from where we have taken these articles. Last but not the least we are thankful to Vitasta Publishing for agreeing to publish it and make so much material available for present and future generations. Let us hope it will be received well by academics, journalists and even by lay people interested in the issue.

— **Asghar Ali Engineer,**  
**Ram Puniyani**

# Introduction

— Asghar Ali Engineer and Ram Puniyani

Ayodhya-Babri Masjid issue has been one of the most contentious issues in Independent India. It had various facets of History, faith and legal aspects related to the dispute. The Allahabad court verdict 2010 was one of the major landmarks in the settlement of the issue. This judgment was to decide the ownership of the land of the masjid. Since the judgment raised a lot of controversies, many a commentator, judge, scholar, activist came out with valuable material, which clarified the complexities of the debate related to this problem. These contributions have added a lot to our understanding of the dispute. In the light of the worth of these wittings, we thought of bringing these together as an edited volume. The following introduction to the volume is in two parts, part I gives the background of the dispute and part II summarizes the major arguments of the articles incorporated in the book.

## I

### **Background**

The judgment on Ramjanmabhumi-Babri Masjid case by the Allahabad High Court delivered on 26 October 2010 revived the con-

trovery on legal and intellectual level though not on political level. There were two issues involved before the court: One, whether or not Babur demolished Ram temple to build Babri Masjid, and two, of the three litigants i.e., Nirmohi Akhara, Sunni Wakf Board and Ram Lalla Virajman, whom did the title of the land belong to.

The honourable judges held that the land on which Babri Masjid stood before demolition be divided into three parts; one part each going to each of the litigant. Many people welcomed the judgment to resolve the controversy and thought it was in the interest of peace and communal harmony. Some thought the judgment was more like a *panchayati* tradition judgment rather than of a high court, and some strongly criticized it as not being on legal grounds as a high court should do in a constitutional democracy.

As for another question i.e., whether any Ram temple existed at the disputed site, the two judges Agarwal and Sharma held that since Hindus believed that Ram was born where the idol of *Ram Lalla* was kept, there existed a temple there. The two judges also referred to the archeological excavation report by way of evidence. However, Justice Khan, the third judge on the Bench, disagreed and held that there was no Ram temple there but agreed that the land be divided into three parts, one part each going to every litigant.

The judgment that the Ram temple existed because the Hindu community believed so came under strong criticism as no judgment could be based on the faith of a community. It should be based only on hard evidence under the Evidence Act of India, it was pointed out.

As for the archeological report, it cannot become a hard evidence unless the report is critically examined in the light of history. Many noted historians like Romila Thapar, Irfan Habib and others have rejected the archeological report as 'manipulated' and hardly fit to be an evidence.

Faith as a ground for judgment can even be a more fragile ground. No court can ever base its judgment on it if it is a part of the constitutional democracy where law of the land prevails. Thus if the archeological report cannot constitute hard evidence as unassailable admissible in a court of law, the judgment of the two judges that there was a Ram

temple is based on faith. To resolve this controversy it is highly necessary that one should first find the historical truth about Babri Masjid-Ramjanmabhumi controversy. In fact, this controversy was not in public domain until idol of *Ram Lalla* was smuggled on the night of 20-21 December 1949 and placed under the central dome of the mosque. Even Jawaharlal Nehru was angry for installing the idol and he wrote letter to the then Chief Minister of Uttar Pradesh to remove it immediately. Chief Minister Govind Vallabh Pant forwarded Nehru's letter to K K K Nayar, the then District Magistrate of Faizabad. But Nayar refused to remove the idol on the grounds that it would lead to law and order situation. He locked the mosque instead of removing the idol.

However, on a petition from a *Pujari* he was permitted to worship *Ram Lalla* and devotees began to flock the place. After installation of the idol, three title suits were filed by Nirmohi Akhara in 1959, by the Sunni Muslim Wakf Board in 1961 and *Ram Lalla* Virajman in 1989 for the title of the land. The controversy disappeared from the public domain and entered legal domain until the BJP revived it in the late eighties.

The BJP had lost heavily in 1984 general elections post-Indira Gandhi assassination and they were in search of an emotional issue to consolidate the Hindu votes. After Muslims agitated against the Supreme Court judgment in Shah Bano case, the BJP thought it fit to revive the Ramjanmabhumi controversy and created a highly charged atmosphere.

The slogan *mandir wahin banaenge* (We shall construct temple at the same place where idol of *Ram Lalla* is kept) caught the imagination of many Hindus and assumed a great vote-catching potential. To outdo BJP, Rajiv Gandhi opened the lock of Babri Masjid for Hindus to worship *Ram Lalla* thinking that Hindu votes will revert to Congress. Thus, it will be seen that the nature of controversy was primarily political, neither religious nor historical. Both the Congress and BJP were competing for Hindu votes. They were least concerned about Ram Temple.

There was yet another factor which made this controversy even more politically explosive. With an eye on the OBC votes, V P Singh implemented the Mandal Commission Report in 1989 on his becom-

ing the Prime Minister. It created an explosive political situation both for the Congress as well as the BJP. Both were against implementation of the report but could not oppose it publicly because both the parties were eyeing OBC votes too.

The BJP used the Ramjanmabhumi *mantra* to attract OBC votes. It intensified the agitation by announcing *rath yatra* by L K Advani from Somnath Temple in Gujarat to Ayodhya in Uttar Pradesh. The Ramjanmabhumi politics received an emotional response and took a communal turn. The *Times of India* described the *yatra* as 'blood *yatra*' in its editorial.

The turn of events became embarrassing for V P Singh. He decided to arrest Advani knowing well that it would result in BJP withdrawing support to his government. But who will arrest Advani and where became an issue. Both V P Singh at the Centre and Mulayam Singh Yadav in UP played politics to take the credit for the arrest. V P Singh connived with Lalu Prasad Yadav to arrest Advani when he entered Bihar. Lalu Prasad became a secular hero along with V P Singh but the government at the Centre could not be saved. The BJP withdrew support and the government fell.

It is unfortunate that constructing a temple became the main reason for politics in secular India. Three general elections were fought on this question directly or indirectly. The BJP managed to use the controversy to the maximum for increasing its vote base. It expanded its vote-base to 29 per cent from 12-15 per cent votes in general elections, thanks to Ramjanmabhumi controversy. The BJP so far was getting only a section of upper caste Hindu votes, mainly from the business community. A very small section of Brahmins also voted for it. The bulk of the Brahmins voted for the Congress as they got maximum share of political power and top government jobs. Minorities also generally voted for the Congress and some secular regional parties. But there was one section called the OBC whose votes drifted. Though no caste census was done since the early thirties, it was believed that the OBC constituted more than fifty per cent of the population.

By implementing the Mandal Commission Report, V P Singh

became the messiah of the OBCs and emerged as their uncontested leader. The implementation of the report changed the whole equation of the Indian power politics. This was not acceptable to the established parties. The BJP which had realized the limitation of the upper caste vote base was especially worried and desperately wanted to do something to upset V P Singh's appellation.

Advani had thus hit on the idea of *rath yatra* immediately after V P Singh announced implementation of Mandal Commission recommendations. Lord Ram is tremendously popular among lower caste Hindus and he thought roping in OBCs would help the movement gain momentum. Many OBC leaders were given key positions in the party to win them over and thus expanded its vote base.

On 30 October 1990, the BJP announced *karseva* in Ayodhya. It was feared that the activists may harm the Babri structure in the name of *karseva*. Mulayam Singh was the Chief Minister of Uttar Pradesh at that time. He took the challenge and sealed all the routes to Ayodhya so that no BJP-VHP cadres and supporters could enter Ayodhya. Even then thousands of so called *karsevaks* found their way into the town. In fact, the policemen were quite sympathetic to the *karsevaks* and allowed them to enter Ayodhya through different routes.

On 6 December 1992, in the name of the *karseva* the mosque was demolished. No less a person than Atal Behari Vajpayee, who became Prime Minister of India from 1999 to 2004 had assured the nation that no harm will be done to the Babri mosque. Kalyan Singh who was the chief Minister of Uttar Pradesh at that time also gave an affidavit to the Supreme Court, yet all the preparations were made to demolish the mosque.

Eyewitnesses say that all the senior BJP leaders including L K Advani, Murli Manohar Joshi and Uma Bharti were present in Ayodhya at the time of the demolition. Anju Gupta, a senior police officer who was in charge of Ram Katha Kunj Manch security arrangement where Advani was occupying the stage, gave blow by blow account of Advani's movements on the day when she appeared as the CBI witness. According to her, the *manch* was occupied by Advani, M M Joshi, Uma Bharti,

Vinay Katiyar, Ashok Singhal, Giriraj Kishore, Vishnu Hari Dalmiya and Sadhvi Rithambara\*.

This clearly shows that demolition of Babri Masjid was a planned act and not a spontaneous one by the mob as later claimed by the BJP. Kalyan Singh also reportedly took pride that the mosque was demolished under his chief ministership. He went to jail for a day in violation of the affidavit that no harm will come to the Babri Mosque.

It is surprising that in the 8,000-page judgment delivered by the learned judges there is hardly any mention of this criminal act of demolition of Babri Masjid right in the presence of the senior BJP leaders. None of them tried to stop the mob. It is close to two decades and yet no one has been punished.

Some activists and scholars and a section of politicians blame the then Prime Minister, Narasimha Rao, for the demolition. Some suggest that he should have dismissed Kalyan Singh Government in UP. But Narasimha Rao maintained that how could he dismiss it before the act of demolition. He would have been accused of partisanship and interference in state affairs.

The Justice Liberhan Commission also held that Narasimha Rao was in no way responsible for demolition of the mosque. Such a clean chit was taken with a pinch of salt by secularists in the country. It was argued that he could have ordered paramilitary forces posted just 11 km from the site of the Babri Masjid to intervene and stop demolition. The Director General of CRPF said at a seminar in CRPF Academy at Mount Abu that they kept on waiting for instructions from the Centre but none came. The DG said that they had prepared their own strategy to save Babri Masjid with minimum loss of life, however, could not implement it for want of instructions.

Most Muslims believed that Narasimha Rao was an RSS sympathiser and hence he too favoured the demolition. Another argument which did the round was that Narasimha Rao let the masjid fall because he wanted to deflate the BJP balloon. If masjid itself vanished, the BJP would have nothing to exploit, it was argued.

It is very difficult to know the truth but one thing is certain that

Narasimha Rao did not stop demolition. Had he acted on time Babri Masjid could have been saved.

It is true that Babri Masjid was a state subject, but equally true is that protection of the tomb was the Centre's responsibility as the department of archeology comes under the Central Government. It could have also advised the state governments to take action against those making provocative speeches like Sadhvi Rithambara, Uma Bharti, Vinay Katiyar, Singhal and others under Section 153-A and it would have sent a proper message. When some Congressmen advised Narasimha Rao to stop such hate speeches he is reported to have said that it would mean giving them undue importance. This showed either lack of responsibility or collusion at worst.

Or perhaps, Narasimha Rao feared BJP walking away with Hindu votes as high pitched BJP propaganda had created strong feelings among Hindus for construction of the Ram Mandir. Rao perhaps thought any action against Hindu leaders might affect his prospects as Prime Minister. Thus in a democracy power becomes priority over principles.

## II

### **This Volume**

The judgment of this case was awaited with bated breath by different sections of the society. Nobody could imagine that the verdict will be such a gross deviation from the legal norms and will delve on extrajudicial things. There was heaviness in the air; the fallout of the judgment was greatly feared. Expectedly, there were reactions to the judgment all around. The newspaper editorials, the scholars, activists and columnists all came out with their criticism or appreciation of this. The response of the communities was different. A section of the Hindus felt relieved that no violence had taken place; another small section felt that their whole movement had been vindicated by the court. A larger section of Muslim community felt snubbed and dejected by the verdict. For them it came as a bolt in the blue. At one level the case was very clear, the one of property dispute. The verdict

delved on so many extralegal aspects. Expectedly, the responses were diverse but there was a large trend which criticized the judgment.

*Kashmir Times* in its editorial (2 October 2010) came down heavily on the judgment by saying that it was a mockery of justice, it was an extra judicial imposition on the society and that it was confusing at the same time. As such the court was asked to decide the issue ownership of the plot of land at Ayodhya. Instead of answering the simple question in clear cut terms, as judicial verdict is supposed to do, the judgment went haywire to come to the conclusion which has consequences bad for our judicial system. The contradictory stand of the court becomes obvious when one sees that on the one hand it has ousted the claim of the Sunni Wakf Board on the other it upheld it by awarding one-third share of the disputed property to the Board. Judicially, this position is irreconcilable, as much as it defies logic. It also comments that Muslims have everything to lose with this verdict.

*Economic and Political Weekly* editorial gave the history of the dispute and pointed out that the dispute formed the basis of a violent communal movement, due to which the RSS led Hindutva ideology came to the fore, penetrating in the vitals of society. Thus, expansion of this movement led to the coming to power of the BJP which facilitated the RSS combines' different components to infiltrate into state apparatus and changing the social thinking, giving respectability to the divisive politics. This judgment has redefined much of India. There are many other land disputes around places of worship but this one has changed the contours of the legal paradigm of the country.

Justice Khan, one of the judges on the bench sounds very conciliatory in his interview. His judgment takes lots of leaves from the history of Prophet Mohammad. Prophet's treaty of Hudaliyah with the rival group was seen as surrender but it was hailed as a big victory by Koran, as the later trajectory of the events showed. He also quotes Darwin to say that only those species survive which collaborate and improvise. His concern seems to be to focus more on overcoming the plight of Muslim community than on the historical and legal aspects of the issue. He admires the Muslim community for the restraint shown by it

in the wake of Babri demolition. He also warns that another fall and the community and it may not rise again.

Rajinder Sachar, the author of Sachar Committee report, which went into the economic conditions of Muslim minority, says that this judgment will dent the image of judiciary. This also goes against many legal precedents in the past. This judgment basically says that 'Crime Pays'. The Muslims have been totally deprived of their rights, and faith has become the basis of this verdict. The Sangh Parivar has no legal standing in this case and it is time that the political parties take a stand on these issues which are doing gross injustice to the Muslim community. There is no definitive evidence of a temple being there. And there are infinite claims about Buddhist Vihars being destroyed for temples, and Hindu kings destroying the mosques. To consider these things today is against the law of the land. He is strongly critical of the judiciary.

Noted historian Irfan Habib is very critical of the ASI report on which the judgment is based. He points out that ASI under the NDA Government of Atal Behari Vajpayee was biased and its report suffers from serious omissions of findings like remains of bones. And there are mischievous fabrications like the presence of pillars. There are gross inaccuracies of the understanding of history by one of the judges. ASI has committed various blunders in its report and the judgment has set wrong precedents. He hopes that the Supreme Court will go into the fundamental issues and set the inaccuracies of the verdict right.

The counsel of Liberhan Commission, Anupam Gupta, criticizes the verdict on several grounds. According to him, Justice Agarwal and Sharma are deeply steeped in orthodox Hinduism. Justice Sharma makes orthodox Hinduism as the basis of his judgment, going to the extent of dismissing that there was a mosque at all. Justice Khan does recognize that Muslims owned the dome while Hindus had possession of *Ram chabutra* outside, but while giving the verdict the facts are reversed and Hindus are given the possessions of the central dome. Even the concept of *Ram Lalla* being a legal entity has been stretched too far. The concept of an idol being litigant is borrowed from the Roman law. The Hindu idol or deity does have a legal or juristic personality but from here to

proceed further to hold that not only the idol but even the place where it is kept is a juristic personality and has a legal persona of its own, is totally unacceptable.

Communist Party of India (Marxist) General Secretary Prakash Karat restates his party's line that Ayodhya issues should be decoupled from faith and law should be the determining factor. Now we have come to such a pass that even law is being guided by faith. He cautions that this verdict may initiate the process of playing politics around the issues of Kashi and Mathura and many other places. He hopes that the Supreme Court will uphold the Constitutional principles while giving the judgment. Zafaryab Jilani, counsel for the Sunni Central Wakf Board in the Ayodhya title suit and convener of the Babri Masjid Action Committee (BMAC), has been consistently fighting this case. On the one hand he expressed satisfaction that the process of the case is complete, on the other he felt dejected that the process of law has not been upheld. According to him, the personality of Ram is not under dispute as he has been described "Imam-e-Hind" by a person no less than Allaama Iqbal, but still his birth place has not been described by the legendry book, the *Ramayana*. The demands that the masjid should be located outside the *Parikrama* area or outside Ayodhya are like asking Muslims to surrender the mosque.

Dr Rajeev Dhavan, a senior advocate of the Supreme Court, criticized the judgment by stating that a title suit had been turned into a partition suit. The title lies with Sunnis who had taken over the masjid centuries ago. The verdict absolves the crimes of installation of *Ram Lalla* idols and the demolition of the mosque and bases its arguments on the grounds which bypass the law of the land. Negotiation should begin with the confession of those who have destroyed the mosque, and that alone can lead to a negotiated settlement. According to him, this is not a proper judgment. It merely records what took place in the court by way of an argument and then proceeds to confirm a Hindu case on issues which no legal court is competent to answer. It has destroyed the moral and legal foundations of the right of Muslims. Ravi Shankar Prasad, the BJP's national general secretary and chief spokesman, who represented

the Hindu Mahasabha, which fought the case on behalf of *Ram Lalla Virajman*, the deity of *Ram Lalla*, says that Muslims should take a hint from this judgment. Now negotiations are needed as a three-way split in the property has to take place and that cannot be done with an inch tape but only through negotiation. Since the birth place of Ram is not known, the court has done well to consider faith and belief in the matter. He upholds the concept of deity being the litigant. Outlining the core of Sangh Parivar ideology he states that since Muslims have never claimed that this mosque was an integral part of their faith, which *Ram Lalla* is for Hindus, it is ideal that the concerned parties sit down and talk and reconcile in the larger interest of all.

The VHP leaders Acharya Giriraj Kishore and Praveen Togadia are joyous over the verdict. They feel the Central Government should take over the entire 67 acres of land and hand it over for construction of a grand Ram temple. According to them, the court has upheld faith of crores of Hindus. They see no justification in giving 1/3 of the land to the Sunni Wakf board as already the court has accepted that it was a place of birth place of Ram. According to them, Muslims have lost the title suit and the Supreme Court will uphold this.

Most of the serious political commentators have scanned the judgment from various angles. Dilip Padgaonkar in his 'the Muddle path' opines that once faith and belief become the base of legal verdict of a legal tangle, the nation embarks, swiftly and surely, on the slippery slope of majoritarian conceit. His analysis is apt that Sangh Parivar's call for compromise is a call for Muslims to surrender their rights for the sake of Hindu sentiments. The biggest flaw of the verdict is that the court has treated Lord Ram as a 'juristic person'. With this the law has placed a deity or an idol on par with flesh-and-blood litigants. This is a strange stand, which belittles the exalted stature of Hinduism's most revered divinity.

T R Andhyarujina, a senior advocate and a former Solicitor-General of India in 'A verdict that legitimizes the Masjid Demolition' is shocked beyond belief to note that the reprehensible act of demolition of masjid has not been considered at all in the verdict. Also that P V

Narasimha Rao's statement that the masjid will be built at the spot has been ignored. The litigants who have taken the law into their hands have been exonerated. As such it is an elementary rule of justice in courts that when a party to a litigation takes the law into its own hands and alters the existing state of affairs to its advantage, (as the demolition in 1992 did in favour of the Hindu plaintiffs), the court would first order the restitution of the pre-existing state of affairs.

The judgment has utterly failed to bring about any reconciliation. In fact, the judgment has set a dangerous precedent. It may lead to a phenomenon in which the court of law will thus become majoritarian in its stance and all the legal values and protection of minorities and their faith in the Constitution may be ultimately subverted.

Mukul Kesvan sees the judgment as reflecting the state of India. The plight of Muslim community is well reflected in his article.

According to Javed Akhtar, Muslims couldn't afford to be secular. He was suggesting, ironically, that Indian Muslims could only be militant or moderate, bad or good. Being secular was the privilege of chivalarious Hindus; Muslims, by implication, were limited to the roles forced upon them by their Hindu interlocutors. This insightful article laments the degeneration of the state of social affairs and the decline of secular values in India.

Ronojoy Sen's main concern is that the court has taken the issues outside its jurisdiction. This is reflected in the verdict of Justice Sudhir Agarwal. Agarwal approving the findings of 'positive evidence' for Ram's birthplace in the disputed site is 'not only making a futile attempt but is against all the canons of the principles of law'. Barkha Datt sees the response of the nation to the verdict as dignified, sober, restrained, and mostly, eager to move on and also gives the prescription for the future. She points out the hypocrisy of the response of BJP-RSS, who on the one hand said that the verdict should not be seen as a victory or defeat, at the same time demanded the building of a grand Ram temple, she wishes that they (BJP-RSS) would talk more about the syncretic traditions of India. Varghese George shows the differing responses, while BJP workers are feeling enthused and keeping the faith, the Congress is

keeping the middle path; just going along the stream and only SP-RJD appreciating the insecurity of Muslim community. One knows that this judgment has once again reemphasized that Muslims are sliding down the ladder becoming the second class citizens.

*The Hindu* report 'The Young Muslim and Reflecting on Ayodhya' tells us the state of mind of the Muslim youth in the wake of this judgment. Post verdict the insecurity of Muslims has gone up tremendously. There is a disappointment in the community and this is voiced in the statements of Muslim organizations. Muslim community as such had promised to welcome the verdict, come what may but how can one welcome a judgment which talks of theology in 21st century. Vinod Mehta of *Outlook* tells us an interesting incident about faith and courts. "A couple of years ago, the Kondhs of Niyamgiri asked the Supreme Court to deny Vedanta permission to mine bauxite on their mountain since their God is *virajmaan* there. Do you have any proof, asked the court? No, said the tribals, it is our belief He lives there. The tribals lost the case because the highest court in the land refused to take cognizance of just belief." The contrast between this incident and the Ayodhya verdict is starkly clear. Mehta does vouch for an all inclusive Hinduism and faith but the court verdict seems to be another cup of tea. T K Rajalakshmi laments the fact that the judgment apparently has not taken into account the evidence presented by the leading historians on the disputed site. It is a setback to historical inquiry and precision. She quotes Suraj Bhan to make her point. Suraj Bhan refutes that "archaeological evidence proved the historicity of Ram as a person who lived at the site where the present day Ayodhya is located during the period of early NBP [northern black polished] ware (circa 700 BC) or that he was born at the place where Babri Masjid today stands."

Sunil Khilnani points out that the Ayodhya verdict has damaged our jurisprudence, and this damage can be undone only by struggles and intervention of our politics. The nation had shunned the political issues to the court and that is something which cannot solve these type of problems. It is a verdict which should trouble us as a nation. He also hopes that the Supreme Court will change this judgment. Siddharth

Vardarajan also feels that force of faith has upturned reason in this case and goes on to say that there is no mention of the birth place of Ram even in the epic *Ramcharitmans* of Tulsidas, one of the greatest Ram *bhaktas* of all the time. As per Praful Bidwai, this judgment baselessly privileges one particular faith and gives it the status of law. According to him, the demands of VHP to Muslims to give up their claims are a one-sided matter and will further marginalize the Muslim community. Sitaram Yechury is forthright in stating that People's faith in the rule of law can not be interpreted as their unquestioning acceptance of law that is based on faith. He asks that had Babri Masjid been there, protected from the demolishing hammers of BJP, would the judgment have been the same? As per him, reconciliation is possible only once justice is done and truth established. Dilip Padgaonkar in another of articles, 'See clearly: Take off communal blinkers' stresses the need to overcome the communal thinking and outlines the different options available in this direction. J Sri Raman feels that the verdict is a windfall for the political process unleashed by Advani. The politics based on faith is having a last laugh. Various leaders of Advani *parivar* are jubilant over the verdict as the judgment has given them a boost in their political agenda. A G Noorani shows that how the verdict has wronged the Muslims. The fallacy of the judgment is a big setback to the Muslim community in their survival as the citizens of India. Prabhat Patnaik feels that this verdict is a retreat to pre-modernity and thereby a big set back to the democratic ethos of the country. This verdict represents a dangerous trend; a retrogression from modernity and democracy. Dipankar Bhattacharya states that the verdict is a big blow to the concept of Modern India. He has doubts as to how far the Supreme Court can salvage the spirit of law and justice and heal the post-Ayodhya wound on the body polity and the composite culture of the country that has only been rendered deeper and more acute by the Allahabad High Court verdict.

The Government failed to remove the idols kept in the masjid and later failed to protect its demolition. To rub salt into the wound, the court too failed to protect the Constitution. Shekhar Gupta thinks it is a verdict for India and temple and mosque can coexist. For Harsh Mander,

the judgment goes against the idea of India. According to him, the Babri Masjid dispute was never a clash between Hindus and Muslims. It was between Hindutva and secularist visions of India. Rajani Baxi calls for a secular rethink in the matter of the dispute. She asks for examining the ways in which we can foster a truly plural and vibrantly secular culture in India. There is a need to think of various kinds of grievances that have been dismissed out of hand. Mahesh Rangarajan thinks that the judgment tests the idea of India. This verdict has been positive as far as conflict resolution is concerned but its consequences will remain disturbing. For Khushwant Singh, the bickering over mosque and temple is unwarranted. Sanjay Kaw witnessed the whole thing as a secret witness and was horrified to witness what he saw. He saw awesome organizational machinery managing the needs of tens of thousands of *karsevaks*: identity cards, meal coupons, tents, lights, feeding arrangements. The machinery wasn't, however, confined to merely boarding and lodging. The tools required for the final demolition were also being put together. Everyone knew that D-Day was nearing. This finally tells us the truth of demolition through the eyes of an eye witness. Rohini Hensman takes a broad look at history, religion, politics and law of the issue and wants the nation to come to grips with the concept of secularism. She states that the definition of secularism as the belief that all human beings are entitled to equal respect and consideration, equality before the law and equal protection of the law, equal rights and opportunities, would result in including millions of humane and progressive people of faith under the banner of secularism. This in turn would marginalize extremists and strengthen secular activism to a point where it could ensure peace and communal harmony under all circumstances.

Haider Abbas goes to the deep study of BabarNama and other historical documents to tell us the fabricated nature of the perception around which the whole dispute has been raised. Irfan Engineer gives a detailed legal history of the dispute to prove that the whole history as seen through the legal angle is explicit and that the present controversy is bypassing the legal foundations. Shahjahan Madampat shows that this verdict is a travesty of justice. Sagarika Ghose thinks that instead of Supreme Court

this dispute needs a political initiative which can seize the moment to solve the issue. Anand Teltumde sees it as a retrograde judgment rewarding the Hindus. Manoj Mitta shows that the ideology of Hindu hegemony has now received judicial approval because the Supreme Court, while equating Hindutva with the liberal ethos of Hinduism, steered clear of the fact that the term had been coined by Veer Savarkar to suggest that India belonged only to those for whom it is both birthplace and sacred land. Javed Naqvi sees it as an assault not only on the minorities but also on the secular ethos of the country. K Visysagar Reddy sees it as a calm before the storm. He says that in this verdict neither historical nor legal evidence was cited to justify the Hindu-religious argument. That alone is the bone of contention in the whole episode.

For Subranamiam Swamy, temple was there and the judgment restores the historical truth. Swapan Dasgupta argues that with this judgment Ayodhya is no more a political issue as henceforth it will be a religious issue. He celebrates the fact that Hindus have ceased to be defensive about their faith and ritual practices. Maulana Wahiduddin Khan wants Muslims to accept the verdict, as their earlier refusal to accept the Shah Bano judgment cost them very dear. Yoginder Sikand, as an agnostic, is aghast at the issue of Ayodhya temple-mosque drawing so much national attention. Rajesh Ramchandran sees this verdict as the victory of Sangh Parivar. For Sucheta Chatterjee, the mask is off as the judgment of the Honorable Allahabad High Court appears to be a clean break from the secular traditions of India. Avinash Pandey Samar sees it as the burial of judicial system in India. S G Vombatkere points out that decision on the Babri mosque issue, that does not bring peace and harmony between Hindus and Muslims, cannot be in the national interest, regardless of historical blunders and past judicial and political decisions.

This compilation as a whole covers a broad spectrum of opinions of intellectuals and columnists in response to the verdict. The responses are diverse and do bring out all the facets of the issue. Of course, the tenor of a large number of responses has been very critical of the judgment as a whole.

Section – I  
**Babri Masjid**

# Mandir-Masjid Dispute: A Backgrounder

– Ram Puniyani

The ‘disputed structure’, which till few years ago was known as Babri Masjid, started being referred to as the precise place where Lord Ram was born. It is said that this was built by the Mughal invader Babur to humiliate the Hindu psyche. Many claim that it stands as a shame to the honour and prestige of the nation.

The demolition of the structure came as a big jolt to the whole country. While a section of society (those belonging to the Sangh Parivar, SP) referred to it as the wiping away the blot on the face of the nation, *Shourya Divas* (day of bravery), *Hindu Navnirman Divas* (day of Hindu resurgence) etc., a large section of population felt it was a day of shame for the secular and democratic values for which we stand. It was a day most of the people believing in the values emerging from India’s freedom struggle, the values of democracy and secularism, hung their heads in shame. It was a day when many of this section felt that it was the major onslaught on the principles enshrined in the Indian Constitution.

“The Ramjanbhumi-Babri Masjid controversy is not of recent origin. It originated, thanks to the British policy of divide and rule, in the nineteenth century. To be more precise it originated around 1855, before the 1857 war of independence.”<sup>1</sup>

On the night of 22 December 1949 few miscreants entered the mosque and installed the *Ram Lalla* idols in the mosque. This sowed the seeds for renewal of the controversy in times to come. The controversy came to the fore in 1984, when in the first '*Dharma Sansad*' (Religious Parliament) of Vishwa Hindu Parishad (VHP) a resolution was unanimously adopted demanding the 'liberation' of the site of birth of Lord Ram. The issue had been forgotten since 1949. Later, on 27 July 1984, Sri Ramjanmbhumi Mukti Yagna Samiti (Committee for Sacrifice to Liberate Ram's Birth Place) was founded under the leadership of Mahant Avaidyanath. This campaign was to have very serious repercussions.

"Its impact derived once again, from the diversity of sects represented in it since *Vishnuites*, *Shaiivites* and *Tantrists* who have a long history of violent competition were peacefully gathered under the banner of a goddess not worshipped by any of them; *Bharat Mata*, Mother India"<sup>2</sup>

Later, the political wing of SP and BJP decided to enter the fray in a big way and L K Advani's Rath Yatra began from Somnath to Ayodhya. The trail of *yatra* left a number of incidences of communal violence in its aftermath. Also, the anti-minority (Muslim) hatred started to rise due to the repeated campaigns around the temple issue. Advani could not complete his *yatra* as he was arrested midway on 25 October 1990. Still many *karsevaks* assembled at the Babri Masjid site and tried to damage the mosque. The then Mulayam Singh Yadav Government had to open fire which killed several people.

Following this, the call was given for the *karseva* at the site on 6 December 1992. For the *karseva*, nearly three lakh volunteers were mobilized from all over the country. The BJP chief minister of the state gave the written undertaking to the court to protect the mosque. In the demolition, which took place, the police and the other paramilitary forces withdrew from the site leaving it open to the *karsevaks*. The mosque was demolished in five and a half hours and the debris was thrown in the river Saryu. A makeshift temple came up in a day's time, which was declared to be the prelude to the real grand temple, which

will be built in future. In the post demolition-period, massive riots took place all over the country, especially in Mumbai, Surat and Bhopal. The demolition led to dismissal of the BJP governments in four states and preparation for the parts of the temple began in workshops scattered all over. Since then the on-off game of the temple agenda is on. Also different groups affiliated to RSS have been talking in contradictory voices about the temples at Ayodhya, Kashi and Mathura.

So where has this movement taken us over a period of last thirty years or so? It has been a major movement, which was based on the issue of religion and has been used for mobilizing a section of the population for political purpose in a big way. Also VHP started making pillars and other parts of the temple in different parts of the country, despite the matter being in the court. Interestingly the section of Muslim leadership promised to abide by the court verdict while a big section of SP asserted that temple construction will be done irrespective of the court verdict. The Bharatiya Janata Party though has been saying off and on that it would stick to the court verdict, it also intermittently kept saying that 'construction of Ram temple is the national sentiment which remains unfulfilled.'

There is a perception amongst some people that there existed a temple during the time of Maharaja Vikramaditya. At the same time there is some controversy as to which of the Vikramaditya resurrected the place and built a magnificent temple. It was with 84 pillars of Kasturi, a few of which still stand in the mosque-like structure and tell their own tale. The temple, it is said, was desecrated and destroyed by Mir Baqi, a commander of Babur's hordes after Babur visited Ayodhya, and a mosque was sought to be raised there, in order to please Faqir Fazal Abbas Qalander<sup>3</sup>.

Pro-Hindu scholar Konraad Elst points out 'That the Babri Masjid replaced a pre-existent centre of worship, is also indicated by the fact that Hindus kept returning to the place, where more indulgent Muslim rulers allowed them to worship on a platform just outside the mosque<sup>4</sup>.

These perceptions are reflected in most of the literature produced by the VHP. Historical evidence is presented on these lines and this

formulation incorporates three major queries:

- (a) Whether Ram was born exactly at the spot where the masjid was located?
- (b) Was a temple demolished before the construction of the mosque?
- (c) Was there a popular belief about the existence of Ram Temple and its demolition?

Whether Ram was born at the spot where masjid was located? This is very vexed question where myths and facts have got mixed up in an apparently inseparable manner. One of the reasons for this is the very period of history/mythology being referred to. Due to the extremely ancient nature of the period being referred to, the sources have to be examined very carefully in order to come to a particular conclusion. To begin with while many historians will regard Ram as a mythological figure, many others are endowing the status of a historical figure to him.

Noted scholar Suniti Kumar Chatterjee maintains: “The *Ramayana* is basically a creation by some single poet named Valmiki. There is evidently no historical core below the surface. No scholar of Indian history now thinks that Rama, the hero of the *Ramayana* was a historical person who can be relegated to a particular period of time.”<sup>5</sup> Even if we grant that he was a historical figure then the question arises whether he was born in Ayodhya? And if he was born in Ayodhya was he born on the precise spot where the Babri Masjid is located.

Let us keep in mind that even today there are many other Ram temples right in Ayodhya, which claim that Lord Ram was born precisely at that spot. Coming to the existence of Ayodhya, did it exist when Ram was born? To begin with, “The events of the story of Rama, originally told in the *Rama katha*, which are still not extant, were rewritten in the form of a long epic poem, the *Ramayana*, by Valmiki. Being a poem it could have been fictional, including places, characters and events.”<sup>6</sup> According to Aihole inscription, Epigraphia Indica,<sup>7</sup> Rama was born in *treta yug*, in the year around 3100 BC. The description of Ayodhya in this epic does not match with the archeological findings. One of the archeologists B

B Lal had concluded that “it would seem reasonable to ascribe the first occupation of the Janmabhumi area to circa seventh century BC.”<sup>8</sup> The development of this area as a settlement came much later, certainly not earlier than the end of sixth century or the first half of the fifth century, when several other towns emerged in Gagentic plains.

The facts about this issue are well summed up in the report of the 25 eminent historians of Jawaharlal Nehru University who in the wake of growing communalization around this issue came up with a well studied report<sup>9</sup>. These historians point out:

1. There is no archeological evidence to show that at this early time the region around the present-day Ayodhya was inhabited. The earliest possible date for settlement at the site is of about eighth century BC. The archeological remains indicate a fairly simple material life, more primitive than what is described in Valmiki *Ramayana*.
2. In *Ramayana*, there are frequent references to places and buildings on a large scale in an urban setting. The archeological evidence does not sustain such descriptions of an urban complex.
3. There is also a controversy over the location of Ayodhya. Early Buddhist texts refer to Shravasti and Saketa not Ayodhya, as the major cities of Koshala. There are a few references to Ayodhya, but this is said to be located on the Ganges, not on the river Sarayu, which is the site of the present-day Ayodhya.
4. In the fifth century AD, the town of Saketa was renamed Ayodhya by Skanda Gupt, who moved his residence there. Thus, what may have been the fictional Ayodhya of the epic poem was identified with Saketa quite late. This does not suggest that Gupta king was a *bhakta* of Ram. In bestowing the name of Ayodhya to Saket he was trying to gain prestige for himself by drawing on the tradition of Suryawamsi king, a lineage to which Ram is said to have belonged.

Thus, we can conclude that nobody can be certain about the historicity of Ram or the existence of Ayodhya in 4000 BC, when Lord Ram is supposed to have lived. The same applies to the location of Ayodhya.

It will be worth while to note that the Ram cult in Ayodhya is a fairly late development. Ayodhya has been a focal point of many religions, Buddhism, Jainism and Hinduism. From about fifth century BC, a fairly large Buddhist community was living in Ayodhya. Though this religion suffered a setback during first millennium AD, several remnants of its existence did survive<sup>10</sup>. According to Jain tradition, Ayodhya was the birthplace of the first and fourth *tirthankara*. "The early places of Hindu worship of Ayodhya were of Shaiva or Vishnu provenance. The specific worship of Rama even as an avatar of Vishnu is a much later development. References to the image of Rama appear only in sixth century texts like the Brihasamhita of Varahmihira.... At the present site of Ayodhya there is no evidence of the worship of Rama until the second millennium AD. Even the inscriptions from the fifth to eighth centuries AD do not associate Ayodhya with the worship of Rama."<sup>3</sup>

Hans Bakker after detailed analysis of the available material concludes, "the cult in which Rama was worshipped as the supreme form and main manifestation of Vishnu did not rise to prominence before eleventh and twelfth centuries AD."<sup>10</sup> One can safely conclude that Rama cult became important from twelfth century onwards.

Was Temple demolished before construction of the mosque? Mir Baqui, a nobleman of Barbur's court, built the mosque at Ayodhya in 1528. Most of the subordinates to the king used to implement things in the name of their king. The only source for these credits are the inscriptions on the mosque as the pages relevant to the probable visit of Babur to Ayodhya are missing from the *Baburnama* which is Babur's autobiography. There is no mention of this even in *Tazk-I-Babri*, Babur's memoirs. Babur had been forthright in his memoirs as he mentioned the ordering of mutilation of the nude Jain idols in Urwah Valley near Gwalior on the ground of obscenity. He had no reason to hide the demolition of a temple had it been done on the ground of religious conviction.

After the battle of Panipat he had visited Avadh region. Though religious fervour of Mir Baqui is evident in the verses, there is no mention

of the demolition. Babur's will to Humayun advises him to respect other religions, especially Hinduism, as his subjects are Hindus. Babur himself was no bigot and he gives a good account of his respect for other religions in his *Baburnama*. During his reign, the Guru-Khattri shrine in Peshawar where Hindus offered their hair as an offering, Kachwa where a Muslim lived among Hindu yogis and a lofty idol house standing next to a mosque in Gwalior are good examples of this.

But there is doubt about his visit to Ayodhya itself. There are no contemporary accounts about this episode and one has to infer more from the absence of the demolition, as there is no mention of demolition of the temple in any of the sources at that time. A medieval Persian chronicle, *Ain-I-Akbari*, written in seventeenth century by Abul Fazl refers to Ayodhya as 'one of the holiest of places of antiquity'. It does not mention any demolition and replacement of temple by a mosque. Even Tulsidas, one of the greatest Ram *bhakta* of all the times could not have missed this. He lived just a quarter of century after Babur and it is totally unlikely for him not to have mentioned this.

The claims, which have been made for demolition also do not mention the reference source of that time. Ram Gopal Pande's '*Ramjanmbhumi ka Rakta Ranjit Itihas*' mentions that during Babur's reign Hindus attacked the Babri mosque four times during Humayun's reign ten times; during Akbar's reign 20 times, to recover the site of temple. Even in this popular book no mention is made of the source of this information.

There was popular belief about Ram temple and its demolition. Contrary to the projections that there had been series of clashes from the time the mosque was built, the first major clash between the Bairagi Hindus and Muslims took place in 1855. Mirza Jan in his *Hadigah al-Shuhade* chronicles writes that Hindus captured the Masjid Fidai Khan and demolished it. Muslims retaliated and made Babri Masjid as their base. This description makes an interesting point that Bairagis had the tacit support of British rulers. The clashes resulted in casualties from both the sides. Bairagis on seeing the British forces attacked the Babri masjid and ultimately took

control of the masjid, dug up Muslim graves and also installed the idols there<sup>11</sup>.

It is clear that the first confrontation took place at the instance of the British who succeeded in driving a wedge between Hindus and Muslims. In due course after heavy sacrifice, Muslims took control of the mosque and filed the suit for the legal possession of the place. In 1858, the Muslims filed a complaint about construction of clay *chabutara* near the pulpit of the mosque and puja started being performed there. In 1860, Babri Masjid was properly registered and there are records that the Mahant of Hanumangarhi who wanted to build the house nearby was disallowed.

The other argument in favour of the existence of Ram Temple is based on the myth that since most of the Muslim rulers destroyed Hindu temples to build mosques, Mir Baqui must have destroyed a temple. Even if some Muslim rulers destroyed some temples, that does not prove that Ram temple was destroyed to build Babri Masjid. The British chroniclers sowed the seeds of controversy<sup>12</sup>.

The underlying current of British officials is best manifest in translation of Babur's memoirs by Mrs A F Beveridge. She suggests in a footnote that Babur being a Muslim and 'impressed by the dignity and sanctity of the ancient Hindu shrine would have displaced at least in part' the temple to erect the mosque. Thus, the British policy was very simple. They had to win over the loyalty of the Indian subjects from the previous rulers. They projected themselves as liberators of Hindus from the tyranny of Muslim rulers. They presented the whole history in a communal fashion and the myth of temple destruction by Muslim rulers came in handy for that. So here this basic assumption guided the gazettes and other writings and gradually this British interpretation became the official one and it gets revived at suitable times. S Gopal and others hit the nail on the head when they point out, it is in the nineteenth century that the story circulated and entered official records. Others then cited the records as valid historical evidence on the issue.

The third assertion that Ram was born precisely on that spot is a question of faith, so temple should be built there and operate entirely

on different level. Faith cannot be the basis of history. The facts of history alone guide us about these issues. Resorting to faith can be very a dangerous game and there can be politically motivated faiths as well as in this case there was no controversy on this issue before the British rule and also the same had died down after the independence. It was revived and given the coating of faith, for goals, which have nothing to do with the religion.

The 25 eminent historians from Jawaharlal Nehru University summed up their observations as follows<sup>13</sup>:

1. No evidence exists in the texts that before the 16th century (and indeed before 18th century) any veneration attached to the spot in Ayodhya for being the birth site of Rama.
2. The legend that the Babri Masjid occupied the site of Ram's birth did not arise until late 18th century; that a temple was destroyed to build the mosque was not asserted until the beginning of 19th century; when the observers, before whom the assertions were made, disbelieved it.
3. The full-blown legend of destruction of the temple at the site of Ram's birth and Sita-ki-Rasoī is as late as the 1850s. Since then what we get is merely the progressive reconstruction of 'imagined history' based on faith.

It was propagated that Babri Masjid contains 14 black stone pillars, with non-Islamic motifs; and these must have been a part of the structure of the destroyed mandir. Based on this assertion is the assumption that brick pillar base temple was demolished in 1528-29 and the mosque was erected. This was put forward by VHP during the negotiation about the dispute.

Facts are very different from this. These black stone pillars are there. But similar pillars have also been found in a graveyard at a distance of 0.75 km. The motifs on these suggest a date around 9-10 Century in some and 10-11 century in others. Thus, these don't belong to a single structure. The motif found on the pillars are also similar to the one's on many a site in eastern India<sup>14</sup>. These pillars are made of black basil stone, which is found in Raj Mahal and Mirzapur. "We have many

instances of the transportation of building material from one place to another in pre-industrial India. The Ashokan sandstone pillars were quarried and made cylindrical in Chunar from where they were sent to different parts of the country. Under Firozshah Tughlaq, Ashokan pillars from Meerut and Topla were brought to Delhi<sup>15</sup>." The experts of VHP claim that the carvings on pillars show Vaishnava association. But the core Vaishnavite symbols like *shankh* (conch), *chakra* (wheel), *gada* (mae), and *padma* (lotus) are missing from these. Moreover the general height of these is around five feet, which cannot be the one of supporting pillars. So these pillars are there as decorative pieces and not as the remnant of the previous structure.

It should be noted that glaze ware pottery has been found in the trenches above the floors associated with the brick pillar base structure, and immediately below the general floor of Babri Masjid. The type of pottery is never used in Hindu temples and is associated more with Muslim households. This indicates that brick-pillar structure had already fallen down and was out of use around 13th century and the site was inhabited by Muslims. Similar glaze tiles have been found in other parts of Ayodhya where there was a Muslim population. D Mandal of Department of Ancient History, Culture and Archeology, Allahabad University, has well summed up the archeological angle of the controversy<sup>16</sup>.

1. Of all the archeological material brought to light so far in connection with the (now demolished) mosque, only those from Lal's trenches near the mosque actually count as primary archeological evidence. These too need to be utilized only in accordance with minimal standards of objective observation. Rather than the discovery of lower pre-mosque structure extensively constructed of stone, what has been found is that brick is ubiquitous in lower levels.
2. As evidenced by the available stratigraphy, the so-called pillar bases are certainly not coterminous with one another, but belong to different structural phases, so that the question of their being the components of a single structure is ruled out.

3. There are clear indications that the brick bases are in reality the remains of various walls of different structural phases.
4. These brick remnants speak for *kaccha* construction, and that of brick, but certainly not for a 'magnificent stone temple'.
5. Certain strata have been described as 'pre-Islamic'. However, no diagnostic artifacts have been recovered from these levels suggesting that the description is invalid. The stone sculptors 'found' have neither stratigraphic context nor co-concurrence with diagnostic cultural material rendering it impossible to date them either by stratigraphy or by association.
6. No evidence exists for their having been dumped in the sixteenth century inside the pit—not a single sixteenth century artefact has been associated with the 'hoard', and the pit has been, in stratigraphic terms, contaminated by later material. There is a total absence of stone processing work at the site in spite of the fact that a temple using stone abundantly has been visualized.
7. Smashed or vandalized sculptures are strictly confined to a negligible area, and not scattered over the site. Even if it were suggested that all the smashed sculptors were dumped into one pit, it is difficult to accept that a temple of the size of visualized, would have such a small collection of stone sculptors and further, the sculptors found are incompatible with materials unearthed in the scientific excavations, giving it the status of a mere surface find.
8. No artifacts of the type usually associated with temples have been reported in the systematically excavated trenches. The occurrence of broken 'pillar bases' (even if confirmed to be pillar bases) and walls disturbed by pits are not ascribable to 'mass' or 'massive' destruction, as claimed.

Mandal concludes, 'The available information is quite adequate to support the categorical statement that there was no temple, either of stone or of brick or of both materials, lying below the mosque at the site during the three centuries (thirteenth to fifteenth) which preceded the construction of the mosque.'

The RSS combine asserts that the Ramjanmbhumi movement is

not only for construction of the temple for Lord Ram but is also for reawakening of the national self esteem.

“...Ramjanmbhumi movement is not only for religious unity but also for national unity. Ayodhya struggle is the struggle for integrity and unity of India.”<sup>17</sup>

As pointed out above, this assertion is far from truth. The controversy had died down after the skirmish of the nineteenth century. The question did not come up until after Partition. In the anti-Muslim atmosphere, attempts began to convert this masjid into a temple. During the period of national ‘awakening’, i.e. the freedom movement leading to the independence of India and formation of the nation state it never came up. Even it was lying in hibernation after the installation of the *Ram Lalla* idols during the night of 22-23 December 49.

“A few Hindus entered Babri Masjid at night when the Masjid was deserted and installed a deity there. District magistrate and Superintendent of Police and Force on the spot. Situation under control. Police picket of 15 persons was on duty at night but did not apparently act.”<sup>18</sup> The communalization of society went on in a big way in late 70s and early 80s due to which the Muslim fundamentalists started coming up with agitations like the one opposing the Shah Bano judgment. At the same time, VHP started pressing for the temple building at the site of the masjid. Pt Nehru was very furious about this transgression of some Hindus in installing *Ram Lalla* idols in the masjid. He repeatedly wrote to the chief minister of Uttar Pradesh to get the idols removed but the local DM did not budge. He later resigned and joined the previous avatar of BJP, Jana Sangh, and in due course became an MP. The premises were locked and were opened for worship by Hindus only in 1986.

There are complex factors leading to the build up of the issue. Indira Gandhi’s tilt towards Hindu communalism after the Emergency, local BJP sympathetic official, the rising communalization of society; all contributed to the problem. The VHP went hysterical after the conversion of some Dalits in Meenakshipuram to Islam. It went on to raise issue after issue to further drive the wedge between two communities and in due course took up the issue of Ram Janmabhumi.

Hindu fundamentalist politics was intensifying its onslaught and used the Shah Bano episode to beat the drums of communal politics at the highest pitch. Rajiv Gandhi reduced the serious social issues to the game of cards. After having played the Muslim card in reversing the Shah Bano judgment, he came forward to play the Hindu card by getting the locks of masjid opened for the devotees of Rama. This manipulative politics came in handy for the fundamentalists of both the communities who were waiting for the pretexts to take their politics to a higher pitch.

Meanwhile Babri, Masjid Action Committee under the leadership of Syed Shahabuddin drew a lot of flak when it was supposed to have given the call for boycott of Republic Day in 1987. He denied having given such a call but the damage was done irreparably. The intensity of communal riots went up tremendously in the wake of all these happenings. VHP took the issue to nook and corner of the cow belt by initiating the Ram Shila Pujan and other mobilization programmes. These programmes and provocative propaganda by VHP, RSS, etc, led to a number of communal riots in many places, Indore, Mhow, Ratlam, Kota, Jaipur, Bhagalpur and others. The foundation stone of Ram Janmabhumi was laid on 9 December with the connivance of Rajiv Government, which succumbed to the pressure of VHP-RSS campaigns. This was followed by the Rath Yatra of L K Advani, which brought together an assertive dominant minority to take up this issue. And, finally, the karseva of 6 December 1992 demolished the masjid and inflicted a serious wound to the secular ethos of the country.

This campaign far from expressing the national resurgence and awakening was restricted to a handful of dominant sections. They were also able to mobilize some gullible sections along with the most deprived sections that out of desperation seek to join any expression of their frustration. The majority of Nation, which held on to the principles of freedom struggle, principles of democracy and secularism was a bystander in this game of communal forces. Ayodhya has played a role for the building up of the politics of Hindu Right, Sangh Parivar, and at political level for the BJP. "It has cleverly projected this issue to draw the political mileage from the section of majority community, by asserting

that it has been wronged in the history. It has done manipulation of religious symbols to arouse emotions of common voters of India and to alienate the others who till this period have lived in communal harmony and amity.”<sup>19</sup> SP has also projected the state to be coming in the way of Nation (Hindu Nation). Commenting on the strategy of BJP in RJB campaign Prakash Louis further points out: “In the entire ‘struggle for Janmsthan’ the BJP has tried to absolve itself and the upper caste rulers of the inhuman treatment towards Dalits, tribals and women from the downtrodden communities.”

Even BJP, which ultimately took over this religion-based politics in a big way lost the elections consequent to the demolition and it has not been able to secure more than 25 per cent of votes, indicating that it is hardly a representative of the nation or will of the majority. In a way it is a cleverly planned movement for the communal politics, which has ignored the national sentiments of democracy and secularism. In a way it has been planned and executed to bring together only those elements of society who have no respect for the ideals of the Indian Constitution, the ideals of liberty, equality and fraternity. This movement has trampled on the principles of pluralism and respect for all religions. It has not only resulted in the demolition of a masjid but also wounded the psyche of large sections of minorities. It has not only created a major gulf between the communities but also resulted in the communal riots taking the lives of many innocent poor and also damage to the property worth hundreds of crores.

It is a political movement, which has consolidated the social and electoral base of RSS and its progeny. In the wake of this, different affiliates of SP spread in the south as well, where they had negligible presence so far. In north its presence became more assertive and dominant. Social scientist says: “It was a project pursued in religious idiom by BJP and its front organizations, the SP, for political ends. In 1991, the BJP’s main electoral plank was the ‘Hindu’ demand for the temple at Ayodhya. This nexus between religion and politics proved extremely ‘rewarding’ to the BJP. It won as many as 118 seats in Parliament and emerged as the main Opposition. More importantly, it came to power in four north Indian

states, i.e., UP, MP, Rajasthan and Himachal Pradesh, and reported its presence in almost all the other states”<sup>20</sup> Panikkar further adds, “In the past, religious denominational parties like the Hindu Maha Sabha and the Muslim League had functioned within the secular polity. In course of time, very few could resist the temptation to take recourse to religion for electoral gains. This departure from the secular premises of the constitution was linked with three important factors:

- (1) The increasing religiosity in Indian society,
- (2) The decreasing popular base of the Indian National Congress,
- (3) The ambivalent nature of secularism as practiced by the state.”<sup>21</sup>

The political movement unleashed by SP succeeded in embedding Hindu consciousness as a symbol of Muslim aggression against the Hindus and their religion. “Ayodhya therefore became the site for constructing Hindu solidarity and avenging Muslim wrong. The effective communication of this dual meaning enabled the Hindutva to advance.”<sup>22</sup>

The demolition of masjid was a well planned act. After the demolition of masjid, Advani was chargesheeted by CBI on the grounds that

- (a) he conspired to demolish the masjid by starting the Rath Yatra
- (b) on the eve of demolition he had a secret meeting at the house of Vinay Katiyar, the chief of Bajarang Dal, to finalize the demolition.
- (c) He as BJP president advised UP chief minister Kalyan Singh not to resign till the last dome fell.
- (d) He advised the *karsevaks* to block the roads leading to Ayodhya to prevent the central forces intervening to prevent the demolition. Joshi and Bharati are charged for giving provocative slogans from the dais on the fateful day.

Here, it is worthwhile to recapitulate some of the events leading to Babri demolition. A section of the community started responding to the call of SP (Sangh Parivar). In right earnest SP began the Rath Yatras culminating in the call for *karseva* on 6 December 1992. The

call to get the *karsevaks* went from town to town and SP mobilized three lakhs of them and, of course, twenty thousand *karsevikas* also to do the cooking and cleaning jobs for the kar sevakas. Most of the leaders of SP's aspirations were reflected in Advani's statement that *karseva* will be done with bricks and shovels and Vinay Katiyar summed it up by saying, the mosque will be demolished and the debris will be thrown in river Sarayu. At the same time, Murlī Manohar Joshi stated that decision of *Sants* and *Mahants* (about *karseva*) is more important to them than the verdict of the court and they will implement the wishes of *Sants* and *Mahants*. Incidentally, the *Sants* and *Mahants* had given the call for demolition of masjid.

On the day of demolition on the dais were sitting Advani, Joshi, Sudarshan, Singhal and *sadhvis* Ritambhara and Uma Bharati. Throughout the demolition the *sadhvis* from the dais kept exhorting their Hindu brethren to wipe away the 'symbol of shame' to the Hindu Nation, to drive away the '*Babur ki Aulads*' to Pakistan and also that this is just the beginning of building a Hindu Nation, it's the day of bravery (*Shourya Divas*), and this nation building exercise, which has begun with Babri demolition, will continue with further tasks like demolitions in Kashi and Mathura (*Ye to Kewal Jhnaki Hai Kashi Mathura Baki Hai*). There was not much information about the casualties and deaths in the demolition exercise, one of the reasons being that most of the journalists were beaten up following the demolition and their cameras were destroyed by the rampaging mob. The debris of the demolition was thrown in river Sarayu.

The BJP's electoral strength after an initial setback in assembly elections started going up. Simultaneously, a section of the society started realizing the dangers of SP politics and SP itself started finding the alibis and started cooking lies, which could exonerate it from the guilt of Babri demolition. The first attempt came in the form of an article by K R Malkani, an RSS ideologue, who said that the demolition was the handiwork of the ISI. K S Sudarshan's attempt to put the blame on the Congress being responsible for the blast, which brought down mosque is far from the truth. It is not that Congress government did not falter

in protecting the demolition of the mosque. Its crime in the demolition tragedy is one of the 'omissions', a dereliction of duty. But it was the SP and its paraphernalia, which led the onslaught on the mosque. It was the BJP Government in Uttar Pradesh, Kalyan Singh, the then blue-eyed boy of the BJP, who gave an undertaking in the court to protect it. It was he who committed to the National Integration Council that nothing untoward would happen.

It is clear that it was Advani who led the *karsevaks* to Ayodhya and advised them to block the roads leading to Ayodhya to prevent the central forces coming into the state to prevent the demolition. He had advised Kalyan Singh not to resign till the last dome came down. Uma Bharati hugged and embraced Joshi in celebration of the demolition. Vajpayee the very next day tendered an apology to the nation for the demolition and a week later he assumed a threatening posture by saying that this is what happens when the will of majority is not respected.<sup>23</sup>

Today, Ayodhya has become a vexed issue and we need to take a bold and honest decision. First of all, the court's decision has to be given the sanctity and it has to be understood that 'faith' should not be the guiding spirit in such matters. We cannot abandon the historical facts at the altar of political contingencies of the dominant minority. An amicable solution to Ayodhya can be found only by a cool reasoned approach, free from the hysterical paranoia of the religion-based politics. All the communities have to be taken along and the legality has to prevail over the irrational assertions of a section of community.

## The Historical Context

– Haider Abbas<sup>1</sup>

The country was under a special security cover in the wake of the judgement by the three-judge bench of the Allahabad High Court, on the issue of Ramjanmabhumi/Babri Masjid pronounced on 30 September. Arguably the most knotted civilian suit of independent India, the dispute dates back to 22-23 December 1949 when Rama's idols were surreptitiously kept inside the Babri Masjid. This led to the putting of locks at Babri Masjid, only to be re-opened on 1 February 1986, and since then, quite predictably, it has become the most debated issue of the Indian political windscreen. There is no dearth of books, articles and research papers available on the subject. But, how the contest between the 'Hindu and Muslim side' of the title-suit has been savoured through the legal milieu, is almost unknown. The chapter is an attempt to 'unravel the claims' based exclusively on the documents submitted before the court.

History has to be interrogated, subjected to scanners, sieved and then made to arrive at a standpoint. Eye witnesses' accounts of contemporary or near contemporary sources are to be thoroughly probed, as

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only then, it would become a delving point to pronounce the veritable conclusion-elusive of its bias or any pre-judicial pretence. Obviously, the same criteria would have to be sought to help find out Zaheer-ud-Din Muhammed Babur's (1483-1530 AD), the founder of the Mughal empire in India, connection with the Babri Masjid (1528 AD). The masjid in his name, stands no where today, as it was demolished on 6 December 1992. But, the issue persists. Whether the temple was ever razed to build the Babri Masjid still remains a question. As per the title-suit, the same<sup>1</sup> is divided into a Hindu side and a Muslim side. The Hindus stake their claim on it saying that it is the birth place of Lord Rama, and that Babri Masjid was constructed on the demolished temple site. Muslims refute the claim.

Thus, the first signpost of inquiry would have to be the *Baburnama*. Its dispassionate audit reveals that Babur never went inside the city of Ayodhya, rather he stayed at a distance of about six to eight miles away from Ayodhya on in 1528, AD, at the northern bank of river Ghagra, also called river Saryu.

While he stayed on the northern banks of Ghagra for about a week, his forces reached Ayodhya. It is, thus, evident that Babur neither demolished any temple in Ayodhya, nor constructed any mosque himself. Had he given any order for demolition of any temple, or for construction of any mosque, in place there of (Ayodhya), he would have definitely enquired, about the 'said construction' of mosque from Meer Baqi Tashqandi<sup>2</sup>, his commander of forces. Meer Baqi Tashqandi had called for his audience, on his encampment, during the next summer season while he (Babur) was returning from Bihar. Moreover, Babur would have himself narrated about the said demolition of the temple had he got it done as he was not shy of mentioning the desecration of idols which were broken by him on the grounds that they were nude. Babur had also inquired about the construction of different buildings of which he had given orders. No where in *Baburnama* has he mentioned about construction of Babri Masjid. It is also evident from *Baburnama*, that Meer Baqi Tashqandi had stayed in Ayodhya by defeating Bayazid<sup>3</sup> and Babur had called him during his visit to a place near Ayodhya.

Therefore, it can be annulled that even if some papers of *Baburnama* have gone missing, as the activities of Babur during the period of 2 April 1528 AD and 8 September 1528 AD are unknown, yet, it becomes clear that Babur had sought information about the construction of buildings, even after one year.

There is also, no reference, regarding anything of such order in *Humayun-nama*. Babur was succeeded by Naseer-ud-din Muhammed Humaiyun (1508-1556).

Jalal-ud-din Muhammed Akbar (1542-1605) succeeded Humayun. In *Ain-e-Akbari* (Institutes of Akbar) written by Abul Fazl, there is a reference to Ayodhya, and also to Lord Rama, but there is no mention of either demolition of any temple nor construction of Babri Masjid, although it is clearly mentioned that Ayodhya was known as the place of birth of Lord Rama.

*Ain-e-Akbari* notes the existence of important temples at Allahabad, Varanasi, Neemsar (today in Sitapur) and dozens of other places. It is thus evident that no important place of religious significance was there in Ayodhya during the days of Akbar. It was during this period that Tulsidas wrote *Ramcharitmanas*, but he also has not made any reference to any such temple or any alleged demolition by Babur or Meer Baqi Tashqandi.

In the subsequent periods of Noor-ud-Din Muhammed Jehangir (1569-1627), Shahab-ud-din Muhammed Shahjahan (1592-1666) and Muhi-ud-Din Muhammed Aurengzeb (1618-1707) too there is no reference of Ramjanmabhumi Temple, or any demolition, there of, by Babur or Meer Baqi Tashqandi. In other books of history relating to medieval and Mughal periods, again there is no mention of the alleged demolition while the desecration of Somnath Temple in Gujarat by Sultan Mehmood Ghaznavi in the 11th Century is mentioned in great detail. Why did the historians refer to Somnath Temple and leave Ramjanmabhumi Temple if there were such an incident?

After the contemporary accounts, the second plank would therefore obviously be the near contemporary sources. This would include books concerning some travelogues. William Foster's *Early Travels in*

*India (1583-1619)* has an account of William Finch (1608-1611) but it does not find any citation about the existence or demolition of any Ramjanmabhumi Temple, while there is a specific mention of Oudh (Ayodhya)<sup>4</sup>. He has described Ayodhya as “a city of ancient note, and state of a Potan king, now much ruined, the castle built four hundred years ago. Here are also the ruins of Ranichand(s) castle and houses which the Indians acknowled(g)e, for the great God....” Here, the word Ranichand has been used for Ramchandra, the Hero of the *Ramayana*<sup>5</sup>. In this traveller's account, it has also been mentioned that some two miles on the further side of the river (Saryu or Ghagra) is a cave of Rams's with a narrow entrance where it is thought his ashes were buried<sup>6</sup>.

The next important extract of the book is related to a French publication by Father Joseph Tieffenthaler<sup>7</sup>. He is said to have visited Ayodhya in 1789. He had heard about the demolition of a fortress called Ramkot and construction of a Muhammedan temple at the same place. It was also said that this was constructed by Babur. He has referred to a house where Vishnu was born (whose reincarnation Rama is). In the same description he has also mentioned that the place is encircled by a low wall in which one enters the front hall by a low door. This description does not tally with the structure of Babri Masjid as it was encircled by a high wall and had no low doors but three high *mehrab*s (entrances) for entry into the verandah having three domes.

There is no other book of history of contemporary or near contemporary period making any reference about Ayodhya or Ramjanambhumi. Following the same line, it becomes incumbent to examine the books that came later in 19th and 20th Century. *East India Gazetteer*, first published in 1816, by Walter Hamilton, gives the description of Oudh (Ayodhya) as an ancient capital of the province of Oudh, situated on the south side of river Ghagra where remains of the ancient city of Oudh were still to be seen. He also refers to the mass of rubbish and jungle, among which were the reputed sites of temples dedicated to Rama, Sita, Laxman and Hanuman (all Hindu deities). But, there is no mention of either demolition of Ramjanmabhumi Temple by Babur or construction of Babri Masjid. Hamilton, has quoted extensively from

the narrative of Avadh by Abul Fazl of 1582 (Ain-e-Akbari).

The second gazetteer was by Montgomery Martin<sup>8</sup>. It refers to Ayodhya, but without the ostensible anecdote of Lord Rama's birth-place. Although it does refer to 'the bigot' who destroyed the temples, and who erected the mosque on the site, the mosque at Ayodhya which by far has every appearance of being most modern and which has every appearance of being the most modern is ascertained by an inscription on its walls<sup>9</sup> to have been built by Babur, five generations before Aurangzeb. This renders the whole story of Vikramaditya exceedingly, doubtful, especially as what is said to be the ruins of his fort.... "I am inclined to suppose that it was a part of the building actually erected by Rama."

The next gazetteer is of 1858 by Edward Thorton<sup>10</sup>. It has a citation of a "native tradition that 360 temples built by Vikramaditya were demolished by Aurangzeb and also that a quadrangular coffer of stone, white washed, five ells long four ells broad, and protruding five or six inches above ground is pointed out as a cradle in which Rama was born...who perished in AC 775...." Yet, it is bereft of any talk about the demolition of any temple by Babur.

A peculiar document with significant value, called Four Reports, was made during the years 1862, 63, 64, and 65<sup>11</sup>. In the document<sup>12</sup>, there is a mention of Ayodhya of Rama (which is) said to have been destroyed in about 1426 BC; *janmasthan* or 'birth place temple' of Rama is situated at about half a mile from Laxman Ghat; there is no pointer of its destruction by Babur, no reference about the existence of any such temple by Fa Hian nor Hiuen Tsiang who visited Ayodhya in 7th Century AD. Another document of historical value<sup>13</sup> has a citation<sup>14</sup> of Hiuen Tsiang's visit to Ayodhya but no reference of *janmasthan* or *janmabhumi* temple. It affirmed the construction of mosque by Babur at the site of the *janmasthan* temple. Described it as the place where Ram Chandra was born. Referred to the local saying that up to 1855 Hindus and Muslims alike used to worship in the mosque-temple. Perhaps, the first reference comes about Babur's role in the destruction of Rama's temple, that too, on hearsay of the local people. The next to fall with the same information<sup>15</sup> is almost repetitive<sup>16</sup> of P Carnegy's<sup>17</sup>

description,<sup>18</sup> with the addition of last sentence under the sub-heading of “Hindu and Musalman”

P Carnegy's<sup>19</sup> still had some buyers, as from his book,<sup>20</sup> AF Millet<sup>21</sup> says it<sup>22</sup> under the same headlines in paragraph 619. Millett has made a reference to Appendix A but no such Appendix giving the list of temples said to have been built by Vikramaditya is given! Hence, it becomes quite contradictory as he could not substantiate any Vikramaditya temple to have been destroyed by Babur.

Later on references, can be ascertained through A Fuhrer works<sup>23</sup> he on pages 295, 296<sup>24</sup> and on page 298<sup>25</sup> elaborates about Ayodhya. His standpoint is based on the description of Ayodhya as given by Cunningham<sup>26</sup>. While the observations of the last paragraph<sup>27</sup> are by and large the same as mentioned in the Gazetteer of 1877-78 with slight variations. HR Nevill<sup>28</sup> has taken<sup>29</sup> excerpts from P Carnegy's<sup>30</sup> book with some additions about census of 1869 etc. *The Imperial Gazetteer of India*<sup>31</sup> refers<sup>32</sup> to the birth place in the outer portion of the mosque built by Babur. 'A small platform and shrine mark the birth place,' close by is a larger temple in which is shown the cooking place of Sita<sup>33</sup>. There after, HR Nevill's<sup>34</sup> work is found to be a reproduction of the matter given in the Gazetteer of 1905<sup>35</sup>. Last but not the least is the work accomplished by Esha Basanti Joshi<sup>36</sup>. She has given information mostly based on the material published in the earlier Gazetteers.

Thus, history has been analysed un-plucked, made to speak out unscathed in no unequivocal terms about how the issue of Babur, and later Mughals, and their connection with Babri Masjid, took place in the annals of Indian history. The nation has, as of now, been given the verdict that Ram Mandir is actually the birth place where Babri Masjid stood, built over a demolished temple site! Judgement has been made. Lock, stock and court hammer. This, of course, has come on account of religious faith, and most arguably, 'the evidence', has been pejoratively thrown to the wind. But, nevertheless the country ought to know as to how the facts were overruled to steer through the victory of faith. Would these facts bear a stand in the apex court, the next stage of fight and find a place to scuttle down fiction, is what only time would tell.

Section – II  
Legal Dispute

# History and Nature of Legal Dispute

– Irfan Engineer\*

The dispute over Ramjanmabhumi-Babri Masjid, it is said, is the creation of the colonial rule. It is difficult to be very sure on how far is the hand of the colonial rule in inventing and or sustaining the dispute between some elements from both the communities. However, there is little doubt that the colonial rule benefitted from the dispute and therefore did not seem to take effective steps to see the dispute resolved. The authorities under the colonial rule allowed the dispute over title of the land to acquire communal overtones. Whatever the former colonial masters did, or omitted to do, the post-colonial state fared even worst in the matter. Post-colonial State allowed the dispute over the land title to almost completely polarise the two communities. Essentially, a title suit between the plaintiffs and the defendants over a piece of land was allowed to acquire religious and communal colour with competing all India mobilisations by political leadership belonging to both the communities. Even the most secular Prime Minister of the country—Jawaharlal Nehru—found himself unable to resolve the

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dispute and/or stop it from acquiring communal colour, when he had the opportunity in 1949.

There are no two opinions that in the year 1528 a mosque was built by Mir Baqi by one of the Governors of the Mughal Emperor Babur. The Sangh Parivar maintains that this mosque was built after destroying a Ramjanmabhumi Temple, which existed on the land whereas the Muslim political leaders as well as the most reputed historians of integrity insist that there is no credible proof that there was any Ramjanmabhumi Temple.

After the anti-British rebellion in 1857, the crown proclaimed that it would remain aloof and would not interfere in the religious matters of the people of the country. The colonial power however, was often called upon to mediate disputes between communities. The colonial State did not prove to be an honest mediator in the disputes. The state had its own axe to grind—legitimising the rule of the intruder being the uppermost. At times, the state even invented and created new disputes so that it was called upon to mediate. Ramjanmabhumi-Babri Masjid dispute appears to be one of such disputes created by the colonial rulers. The District Gazetteer of 1905 notes that till 1855, Hindus and Muslims prayed in the same premises which is now contentious Ramjanmabhumi-Babri Masjid site. After 1857 rebellion, an outer enclosure was put in front of the mosque and the Hindus who were forbidden access to the inner yard raised an outer platform (*chabutra*).

The first signs of the dispute sometime in 1861 appear too close after the 1857 rebellion to warrant such a conclusion. A British officer who was officiating as a Commissioner and Settlement Officer, Faizabad, in 1861 wrote a book *A Historical Sketch of Fyzabad Tehsil Including the Former Capital Ayodhya and Fyzabad*. The book was based on what he found was "locally affirmed" and his own surmises—Ayodhya must at least have possessed a fine temple in the Janmasthan. The dispute was initially only regarding *chabutra* adjoining the Babri Masjid. He wrote: "It seems that in 1528 Babur visited Ayodhya and under his orders this ancient temple was destroyed." There is slender evidence to conclude that Babur ever passed Ayodhya.

Hindu priests wanted a temple constructed on the *chabutra* to be able to conduct their worship without vagaries of weather, as *chabutra* was an open platform. It is not clearly known as to when and how the *chabutra* came to be constructed, and whether the *chabutra* was raised on a land having legal title or an usurped land adjoining the mosque called Babri Mosque.

In the year 1885, one Mahant Raghubar Dass, claiming himself to be the Mahant of *Janmasthan* had filed a suit on 19-1-1885 in the court of sub-judge Faizabad, Pandit Hari Kishan<sup>1</sup>. It was alleged in the said suit that *chabutra* of *Janmasthan* was a platform of 21 feet towards East and West and 17 feet towards North and South. It was further alleged in the said suit that as there was no building over it and the *Mahant* and other priests had to face grave vagaries of the weather. The *Mahant*, therefore, should be given permission to construct a temple over the said *chabutra* of 21×17 feet. This was prohibited by the deputy commissioner of Faizabad. The Suit 61/280 of 1885 was dismissed on 24 December 1885. Relying upon the site plan prepared by Gopal Sahai, the learned sub-judge observed:

“The entrance to the enclosure is under a gateway on which appears the superscription of "Allah". Immediately on the left is the platform or *chabutra* of masonry occupied by the Hindus. On this is a small superstructure of wood in the form of a tent. This *chabutra* is said to indicate the birthplace of Ramchander...

“... in between the mosque and *chabutra*, there is a wall...and it is clear that there are separate boundaries between the mosque and *chabutra* and this fact is also supported by the fact that there is boundary line built by the Government before the rent dispute.”

It was further observed that if temple was allowed to be constructed on the *chabutra* at such a place, then there would be sound of bells of the temple and *shankh*, when both Hindus and Muslims passed from the same way. If permission was given to Hindus for constructing temple then one day or the other there would be rioting and thousands of people

would be killed. Thus, the sub-judge opined that awarding permission to construct the temple at this juncture is to lay the foundation of riot and murder, hence in view of the policy and also in view of justice the reliefs claimed should not be granted. The sub-judge also rejected the reliefs sought on the ground of adverse possession and observed that:

“It is most unfortunate that a masjid should have been built on the land specially held sacred by the Hindus. But as that occurred 356 years ago, it is too late now to remedy the grievance. All that can be done is to maintain the parties in status quo.”

The appeal of Mahant Raghubar Dass against the judgement of the sub-judge before the district judge of Faizabad and the Judicial Commissioner, W Young, 2 was also dismissed. In his judgement dated 1 November 1886, he observed:

“This spot is situated within the precinct of the grounds surrounding a mosque erected some 350 years age owing to the bigotry and tyranny of the emperor who purposely chose this holy spot, according to Hindu legend as the site of his mosque. The Hindus seem to have got very limited rights of access to certain spots within the precinct adjoining the mosques and they have for a series of years been persistently trying to increase those rights and to erect buildings on two spots in the enclosure namely (1) *Sita ki rasoi* (kitchen of Sita) and (2) *Ramchander ki janmabhumi* (birthplace of Lord Rama)... I am further of the opinion that the civil courts have properly dismissed the plaintiff's claim.”

Two things are to be noted here. The suit as well as the appeal was rejected on grounds of adverse possession. The dispute was about the *chabuttra* situated in the precinct on which a building was sought to be erected and never the mosque itself. As set out in the judgement, certain elements from the Hindu community tried to persistently increase their rights - in the second and third round to the entire mosque itself. Even

though the reliefs prayed for were not granted, the judgement tried not to antagonise the Hindu community entirely by mentioning the atrocities of the tyrannical and bigot emperors (from whose tyrannical rule the colonial rulers claim to have “liberated” the sub-continent). It is not clear on what supporting evidence did the judges observe that the tyrannical Mughal emperor out of bigotry demolished a temple 350 years ago to build a mosque in his name. Thus, in spite of the judgements, the Ramjanmabhumi-Babri Masjid controversy remained very much alive.

In 1934 riots, which were triggered off by the slaughter of a cow in the village of Shahjahanpur near Ayodhya, riotous mobs demolished part of the wall surrounding the mosque and damaged the domes. However, the mosque was restored by the government.

Interestingly, there was also litigation between Shia Central Board of Waqf and Sunni Central Board of Waqf in the court of civil judge, Faizabad. An inquiry was conducted by the commissioner of Waqfs under the UP Muslim Wafqs Act. By judgement dated 23 March 1946, it was held that the mosque was found by Babur Shah and used by members of both sects.

Till 22 December 1949, Muslims offered namaz in the Babri Masjid. However, on the night of 22 December 1949, idols of Bhagwan Shri Ramchandra were surreptitiously smuggled and installed inside the mosque. Constable Mata Prasad at Ayodhya Police Station reported the incident next day morning and the District Magistrate K K Nayar sent the following message to the chief minister and chief secretary by radiogram:

“A few Hindus entered Babri Masjid at night when the masjid was deserted and installed a deity there, DM and SP and force at spot. Situation under control, police picket of 15 persons was on duty at night but did not apparently act.”

K K Nayar, who later contested elections on the then Jan Sangh ticket, wrote in his diary:

“The crowd made a most determined attempt to force entry. The lock was broken and policemen rushed off their legs. All of us, officers and men, somehow pushed the crowd back and held the gate. The gate was secured and locked with a powerful lock brought from outside and the police force was strengthened.”

Nayar also wrote to the chief secretary that in grave risk of large-scale riots it would not be desirable to attempt the removal of the idols through governmental agency. He also advised against stopping *bhog* and *aarti* but advised that the present *pujari* should be changed. Markandey Singh, Magistrate, first class, and additional city magistrate, Faizabad-cum-Ayodhya after being “fully satisfied from information received from police sources and from other credible sources that a dispute between Hindus and Muslims of Ayodhya over the question of rights of proprietorship and worship in the building claimed variously as Babri Masjid and Janmabhumi Mandir, Mohalla Ram Kot, within the local limits of my jurisdiction, is likely to lead to a breach of peace,” ordered the attachment of the “said buildings” under Section 145 CrPC and appointed Priya Dutt Ram, Chairman, Municipal Board, Faizabad-cum-Ayodhya, as receiver to arrange for the care of the property in dispute on 29 December 1949.

Then a civil suit number 2 of 1950 was filed on 16 January 1950 by Gopal Singh Visharad in the court of the civil judge, Faizabad, praying for a declaration that he is entitled to worship and visit without obstruction or disturbance Shri Bhagwan Ramchandra and others installed in the *janmabhumi* and a perpetual injunction restraining the defendants from removing these idols. Amongst the eight defendants were five Muslims and the state of Uttar Pradesh, the deputy commissioner and the police superintendent of Faizabad.

The civil judge N N Chadha granted an interim injunction on 16 January 1950 allowing *puja* and *darshan* though the rights were in dispute. The order was later modified on 19 January 1950 as follows:

“The parties are hereby restrained by means of the temporary injunction to refrain from removing the idols in question from the site in dispute and from interfering with the puja etc. as at present carried on.”

In addition to the above suit, three more suits relating to disputes over receivership and waqf were filed during the intervening period. The Nirmohi Akhara also staked its claim for ownership of the disputed land.

A lawyer of Ayodhya, Umesh Chandra Pandey, quietly moved an application on 25 January 1986 in the court of Sadar Munsif, Hari Shakar Dubey seeking directions restraining the respondents from imposing any sort of restrictions or hurdles in the *darshan* and *puja*, of Lord Rama and others in the *janmabhumi* offered by him and other members of the Hindu community. The application was in regular suit no. 2 of 1950. The Munsif refused to pass orders on the ground that the file of the leading case along with which the above suit was consolidated was requisitioned in the high court. Umesh Chandra had no *locus standi* in the above suit, and had not even impleaded all the defendants in the suit as party respondents in the application. Umesh Chandra filed an appeal against the order of the Munsif before the district judge, Faizabad, K M Pandey on 31 January 86. The district judge rejected the application of Mohammed Hashim to be impleaded as a party in the appeal. The district judge recorded the statements of District Magistrate Indu Kumar Pandey and Senior Superintendent of Police Karma Vir Singh to the effect that:

“...it is not necessary to keep the locks at the gates for the purpose of maintaining law and order or the safety of the idols. This appears to be an unnecessary irritant to the applicant and other members of the community. There does not appear to be any necessity to create an artificial barrier between the idol and the devotees. It appears that

the opposite parties have remained a prisoner of indecision for the last 35 years. Somebody in his wisdom thought fit to put locks at the gates at any point of time and nobody since then has seen whether there is any necessity to retain locks or not.”

The district judge then observed

“After having heard the parties it is clear that the members of the other community, namely the Muslims, are not going to be affected by any stretch of imagination if the locks of the gates were opened and the idols inside the premises are allowed to be seen and worshipped by the pilgrims and devotees. It is undisputed that the premises are presently in the court's possession and that for the last 35 years Hindus have had an unrestricted right or worship as a result of the court's order of 1950 and 1951. If the Hindus are offering prayers and worshipping the idols, though in a restricted way for the last 35 years, then the heavens are not going to fall if the locks of the gates are removed. The district magistrate has stated before me today that the members of the Muslim community are not allowed to offer any prayers at the disputed site. They are not allowed to go there.... If this is the state of affairs then there is no occasion for any law and order problem arising as a result of the removal of the locks. It is absolutely an affair inside the premises. There is no justification for retaining locks after the positive statements of the district magistrate and the SSP Faizabad that the law and order situation can be very well kept under control by other means as well and for that end it is not necessary to keep the locks on these gates.”

The appeal was allowed and the respondents—district magistrate, the city magistrate and the police superintendent of Faizabad—were directed to open the locks forthwith and not to impose any restrictions or cause hurdle in the *darshan* and *puja*, etc. of the applicant and other members of the community in general. With the order of the district judge, the site, which was in the register of waqf for over 400 years as a mosque was

converted into a de facto temple. The procedure adopted by the district judge for recording the statement of the district magistrate and the senior superintendent of the police was very unusual to say the least.

Application of Umesh Chandra Pandey was incompetent as he was not a party in the suit. The suit itself was not pending. Gopal Singh Visharad, the plaintiff in the Regular Suit No. 2 of 1950 had died years ago and no substitution had been made in his place and as such the suit had automatically abated. Such an order could not be passed altering the situation after 36 years. Also, contrary to the general procedure and practice was the fact that the district judge rejected the application of the Muslims who were originally party to the suit to be impleaded as a party. The district judge had no basis to conclude that Muslims would not be adversely affected and that too without hearing the applicants to be impleaded as a party.

The district judge in effect adjudicated the rights of the contending parties without hearing all the parties to the suit on a very narrow and negative ground that there would not be any law and order problem if the locks were removed. The adjudication was not on strength of respective claims and the case of the parties, as all the parties concerned and the strength of their claims were not heard at all. Law and order problem is never a consideration while adjudicating rights of the party. If the courts adjudicate rights of the parties to litigation on consideration of law and order, what we will have is not rule of law but rule of might. The background in which the judgement was delivered will not be out of place here.

The SSP and the DM would not have given the statement about their confidence in being able to maintain law and order, without approval of the state and central government. The Rajiv Gandhi government was on the one hand trying to appease the Muslim fundamentalists on the issue of Shahbano and intended legislation for denial of maintenance to divorced Muslim women under Section 125 of CrPC. On the other hand, the Government was also trying to appease the Hindu community by getting the locks of Ramjanambhumi-Babri Masjid opened for *darshan* and *puja*.

### **Supreme Court Judgement in Ayodhya case**

The decade of 1980 will be remembered as a bloody decade with communal clashes all over the country as the issue of Ramjanambhumi was politicised and nationalised by the Sangh Parivar. The Ramjanambhumi, which had hitherto remained a dispute between some elements from both communities in Ayodhya, was taken to every nook and corner in most cities and even rural areas all over the country. The demand for which the mobilisation was aimed was to open the lock of the Babri Masjid and permit *puja* and *darshan*. After the lock was opened, the next demand was handing over the entire site for construction of Ramjanmabhumi Temple and shifting of the mosque outside *panchkoshi parikrama*. Legally, it was difficult to achieve this fete without the intervention of the courts and the state. The issue of title of the property, which is the main legal issue involved in the dispute pending in the courts operates against the protagonist of Ramjanmabhumi Temple. For right to worship cannot be claimed as an easement on somebody else's property.

So far as law is concerned, faith and belief, or even proof of place of birth of Bhagwan Ramchandra is not a relevant issue to decide the title and/or grant right to worship. Agitational mobilisation by the Sangh Parivar was to pressurise the state and the courts to act and the pressure did work.

The UP state acquired the place surrounding the place in the name of providing certain facilities to the pilgrims and on the site Rajiv Gandhi laid foundation stone of the Ramjanmabhumi in November 1990. Babri Masjid was then demolished on 6 December 1992 by mobs mobilised by the Sangh Parivar. The courts as well as the state allowed the mob to assemble in the naïve belief that the mosque will not be touched. The Union Government issued ordinance named 'Acquisition of Certain Area at Ayodhya Ordinance' on 7 January 1993 for acquisition of 67.703 acre of land, including the site of Babri Masjid. The ordinance was later replaced by an Act. The Union Government also made a Special Reference under Article 143(1) of the Constitution of India to the Supreme Court for the opinion of the court on:

“Whether a Hindu temple or any Hindu religious structure existed prior to the construction of the Ram Janmabhumi–Babri Masjid (including the premises of the inner and outer courtyards of such structure) in the area on which the structure stood.”

The reference itself was slanted in favour of the majority community. The court was called upon to give its opinion whether *any* Hindu religious structure existed prior to construction of *Ram Janmabhumi–Babri Masjid*.... The structure that stood was certainly not Ramjanmabhumi but Babri Masjid admittedly constructed by Mir Baqi. The only contention of the protagonist of Ramjanmabhumi Temple being that the same was after demolition of Janmasthan temple. Secondly, no time frame was prescribed for examination of the existence of Ramjanmabhumi–Babri Masjid. If the referendum had been answered in positive, the Union Government would have been compelled to hand over the entire site on which Babri Masjid stood to the Hindu litigants or a trust or association. The Supreme Court however rejected the reference as superfluous.

The five-judge Constitutional Bench of the Supreme Court was also called upon adjudication on the validity of the Acquisition Act in *Ismail Faruqui Vs Union of India* (1994 (6) SCC 360). The judgment delivered by Justice Deepak Verma on behalf of the majority held the Act to be valid, striking down only Section 4 (3) of the Acquisition Act on the ground that extinction of judicial remedy for resolution of the dispute without providing any alternative dispute resolution forum amounts to negation of rule of law. The Section 4 (3) is as follows:

“If, on the commencement of this Act, any suit, appeal or other proceeding in respect of the right, title and interest relating to any property which has vested in the Central Government under Section 3, is pending before any court, tribunal or other authority, the same shall abate.”

Even while holding Section 4 (3) to be void and unconstitutional, the majority judgment upheld the Constitutional validity of the rest of the

provisions of the Act, including that of Section 3 by virtue of which, right title and interest of the 67.703 acres of land area, including the site of Babri Masjid stood transferred and vested in the hands of the Central Government. The minority judgment delivered by Justice Bharucha on behalf of himself and Justice Ahmedi held that the Section 3, 4 and 8 are unconstitutional.

The majority judgement held that the land of even a mosque can be compulsorily acquired by the state and it stood on the same footing as that of other places of worship. While there can be no quarrel with that, the effect of compulsory acquisition could not be lost in the case at hand. The minority judgement held that secularism is absolute and,

“The state may not treat religions differently on the ground that public order required it.... When adherents of the religion of the majority of Indian citizens make a claim upon and assail the place of worship of another religion and, by dint of numbers, create conditions that are conducive to public disorder, it is the constitutional obligation of the state to protect that place of worship and to preserve public order, using for the purpose such means and forces of law and order as are required. It is impermissible under the provisions of the Constitution for the state to acquire that place of worship to reserve public order. To condone the acquisition of a place of worship in such circumstances is to efface the principle of secularism from the Constitution....”

Section 7 of the Acquisition Act is slanted in favour of the Hindu community as Section 7 (2) required maintenance status-quo as prevailed before 7 January 1993, which would mean that idols must be retained where they were before 7 January 1993 and *puja* carried on as before. Section 7 entailed idol would remain and *puja* will continue for an indefinite period.

The Ayodhya judgment thus struck down only Section 4 (3) of the Acquisition Act as per the majority judgement and as a result all the suits pending before the high court revived. The minority judgement, however, held that the Acquisition Act vested a whole bundle of rights in

the Central Government, including that of the disputed site. According to Section 6 of the Acquisition Act, the Central Government was enabling provision and could further transfer whole bundle of right and property to any authority or a body or a trust on terms and conditions that the Central Government might think fit to impose. Those terms and conditions are not specified in the Act, nor is there any indication on that behalf available. The majority judgment, however, held that after the pending dispute was adjudicated, the Central Government would hand over the disputed site in accordance with the adjudication to appropriate authority, trust or body. In the event the adjudication is in favour of litigants from minority community would the Central Government with any political party in power have the political courage to hand over the disputed site to a body, authority or trust of minority community to reconstruct the demolished mosque?, that remains to be seen.

## Conclusion

To summarise, admittedly, Babri Masjid was built by Mir Baqi in the year 1528 and is noted in the waqf register of Sunni Central Board of waqf. In 1885 and 1886, the claim of the Hindu litigants was only on the *chabutra* as they wanted to construct a structure to protect the devotees from the vagaries of the weather and no more. On the strength of adverse possession, the courts dealing with the dispute during the colonial period rejected the prayers of the Hindu litigants to construct any structure even on the *chabutra*. The prayers were rejected even though the courts held (it is not known on what evidence) that the masjid was built on land held sacred by the Hindus but that occurred 356 years ago on the same spot. After Independence, the Hindu litigants adopted incremental approach, slowly enlarging their rights and claims with combination of surreptitious acts, agitational mobilisation and repeated applications to the court. Surreptitious acts were committed when no legal claim was left on their side. Another round of litigation took place on threat of agitational mobilisation. The claims were based not on the strength of the title to the property but on their right to unhindered and unrestricted worship. After the idols were smuggled

inside the mosque, there was another round of litigation, which virtually ignored the title and turned the court into a receiver of the property giving the Hindus increasing access to the property as and by way of right to worship, while the Muslim community was denied the access in spite of the fact that the property was a waqf property.

After the locks were opened in 1986 on the ground that there would be no problem maintaining law and order if the locks are open, the Hindu nationalist forces were emboldened even more. As they were mobilising their forces and indulging into hate propaganda, the state remained a mute bystander refusing to act and take preventive measures for maintenance of law and order. Even the courts when they had the opportunity did not act decisively and the hoodlums of Hindu nationalist forces were allowed to assemble in large numbers, ultimately resulting in demolition of Babri Mosque and construction of a makeshift temple. The courts as well as the executive rewarded those who demolished the mosque by legitimising the "rights" acquired by force in the name of maintaining status-quo and law and order. The Central Government acquired the disputed site and the surrounding areas under the Acquisition Act, thus depriving the Muslim litigants of their defence or claim of adverse possession to the disputed site.

The Supreme Court majority judgment legitimised the acquisition by state in the name of maintaining public order. The Hindu nationalist forces have enlarged their rights and claims from *chabutra* to worship on the very disputed site not because of their legitimate claim but by threatening not to obey the orders of the court in matters of "faith".

# The Judgment\*

— Daya Varma, Vinod Mubai\*\*

In their separate judgments on the sensitive 60-year old title dispute on Ramjanmabhumi structure, Justices S U Khan and Sudhir Agarwal said that the area under the central dome of the three-domed structure where Lord Ram's idol exists belonged to Hindus.

Agarwal also decreed that the 2.7 acre land comprising the disputed site should be divided into three equal parts and be given to Sunni Wakf Board, Nirmohi Akhara and the party representing 'Ram Lala Virajman' (Ram deity). However, the third judge Justice D V Sharma ruled that the disputed site is the birth place of Lord Ram and that the disputed building constructed by Mughal emperor Babur was built against the tenets of Islam and did not have the character of the mosque.

Justice Khan said, "all the three sets of parties, i.e., Muslims, Hindus and Nirmohi Akhara are declared joint title holders of the property/premises in dispute as described by letters A B C D E F in the map

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\* Mainly based on reports in *The Hindu* of 2 October 2010

\*\* Dr Daya Varma, Prof Emeritus Pharmacologist and Therapeutics at Mc Gill University, and Prof Vinod Mubai, New York based Physicist, edit *Insaf Bulletin*, a monthly journal on secularism, democracy and human rights.

Hindus were worshipping Ram chabutra and Seeta rasoi much before 1885. It was a unique and absolutely unprecedented situation inside the boundary wall and compound of the mosque that Hindu religious places were there which were actually being worshipped along with offerings of Namaaz by Muslims in the mosque.

Therefore, both the parties, Muslims as well as Hindus, are held to be in joint possession of the entire premises in dispute.

— Justice Khan

Plan-I prepared by pleader/commissioner Shiv Shankar Lal appointed by court in Suit No 1 to the extent of 1/3rd share each for using and managing the same for worshipping. A preliminary decree to this effect is passed.”

However, the judge observed that the portion below the central dome where at present the idol is kept in the makeshift temple will be allotted to Hindus in the final decree. He also said that the share allotted to Nirmohi Akhara will include 'Ram Chabutra' and 'Sita Rasoi' as shown by the said map.

Justice Khan said even though all the three parties are declared to have one-third share each, “however, if while allotting exact portions, some minor adjustments in the share have to be made, the same will be made and the affected party will be compensated by some portion of the adjoining land acquired by the Central Government.”

Justice Khan observed that the disputed structure was constructed as a mosque by or under the orders of Babur but it is not proved by direct evidence that the premises in dispute including constructed portion belonged to Babur or the person who built it. He also said that no temple was demolished for the purpose of constructing the mosque as it was built over the ruins of a temple which lay there for a very long time. He said that the area

covered by the central dome of the three-domed disputed structure, which was the place of birth of Bhagwan Ram as per the faith and belief of the Hindus belonged to plaintiffs (party on behalf of Lord Ram) and shall not be obstructed or interfered in any manner by the defendants. He also observed that the area within the inner courtyard excepting some portion belonged to members of both the communities, Hindus and Muslims, as it was being used by both since centuries.

Justice Agarwal said the area covered by structures Ram *chabutra*, Sita *rasoi* and *bhandar* in the outer courtyard is declared in the share of Nirmohi Akhara and they shall be entitled to possession thereof, in the absence of any person with better title.

Justice Agarwal said the open area within the outer courtyard shall be shared by Nirmohi Akhara and the party for Lord Ram since it has generally been used by the Hindu people for worship at both places.

“It is, however, made clear that the share of Muslim parties shall not be less than one-third of the total area of the premises and, if necessary, may be given some area of the outer courtyard.”

“It is also made clear that while making metes and bounds, if some minor adjustments are to be made with respect to the share of different parties, the affected party may be compensated by allotting the requisite land from the area which is

The share of Muslim parties shall not be less than one third (1/3) of the total area of the premises and if necessary it may be given some area of outer courtyard. It is also made clear that while making partition by metes and bounds, if some minor adjustments are to be made with respect to the share of different parties, the affected party may be compensated by allotting the requisite land from the area which is under acquisition of the Government of India.

— Sudhir Agarwal

The disputed site is the birth place of Lord Ram. Place of birth is a juristic person and is a deity. It is personified as the spirit of divine, worshipped as birth place of Lord Ram as a child. Spirit of divine ever remains present everywhere at all times for anyone to invoke at any shape or form in accordance with his own aspirations and it can be shapeless and formless also

The disputed building was constructed by Babur, the year is not certain but it was built against the tenets of Islam. Thus, it cannot have the character of a mosque.

— Justice Dharam  
Veer Sharma

under the acquisition of the Government of India,” the judge said. Justice Agarwal said the parties of the Muslim side have failed to prove that the property in dispute was constructed by Babur in 1528 AD.

Justice Agarwal, who wrote the lengthiest judgment, began by quoting extensively from the Rig Veda with verses referring to the destruction and the subsequent creation of the universe. “During the Dissolution, there was neither existence nor nonexistence, and at that time neither *lok* (world) was there nor was anything beyond the space. What encompassed all at that time? Where was the abode and of whom? What was the unfathomable and deep water?,” he quoted from Vedic text in the beginning of his judgment.

Justice Agarwal, whose judgment ran into 21 volumes and more than 5,000 pages, further quoted, “None knows and none can tell as to from where and how the Creation took place, because even the scholars or those having foresight, were born after the Creation. Hence, none knows the source of this Creation.”

“At that time there was neither death nor immortality, and there was also no knowledge of day and night in [the] absence of the Sun and the Moon. In that stage of vacuum, *Brahm* (the Supreme Being) alone was imbibing life from His own power. There was nothing beyond or distinct from Him,” he said.

Justice Dharam Veer Sharma, observed that the disputed site is the birth place of Lord Ram. "Place of birth is a juristic person and is a deity. It is personified as a spirit of divine worshipped as Lord Ram as a child."

"Spirit of divine ever remains present everywhere at all times for anyone to invoke in any shape or form in accordance with his own aspirations and it can be shapeless and formless also," he said.

On the disputed structure, he said, "even if it were constructed by Babur, the year is not certain and it was against the tenets of Islam. Thus, it cannot have the character of a mosque." Differing with the other two judges, he also ruled that the disputed structure was constructed on the site of the old structure after demolition of the same. "The Archaeological Survey of India has proved that the structure was a massive Hindu religious structure," he said.

He agreed that the idols were placed in the middle dome of the disputed structure on the intervening night of 22-23 December 1949.

With regard to the status of the disputed site—inner and outer courtyard—Justice Sharma said, "It is established that the property in suit is the site of *janmabhumi* of Ramchandra Ji and Hindus in general had the right to worship '*charan*', '*Sita sasoi*', other idols and objects of worship that existed upon the property in suit."

He said, "It is also established that Hindus have been worshipping the place in dispute as *janamsthan*, and visiting it as a sacred place of pilgrimage since time immemorial."

Justice Khan opined that the verdict has given Indian Muslims a good opportunity to spread to the world the teachings of Islam.

"Some very sane elements advised us not to attempt that. We do not propose to rush in like fools lest we are blown. However, we have to take risk. It is said that the greatest risk in life is not daring to take risk when the occasion for the same arises," he wrote in the prelude to his 285-page judgment.

He bluntly told the parties to the dispute that the nation might not be able to rise again if the incident of 6 December 1992 (when the Babri Masjid was demolished) was repeated.

Section – III  
**Mediaspeak**

### **Ayodhya Verdict-A Mockery of Rule of Law\***

Retrospective sanction of 1992 demolition on questionable grounds makes mockery of secularism and rule of law in India.

The verdict of the Lucknow bench of Allahabad High Court on the Ayodhya dispute will be remembered more for its extra-judicial impurities than as a citable case of immaculate jurisprudence. Immediate impact of the pronouncement without untoward fallout, amid hyped fears about its grave consequences, is perhaps a more significant development than the judgment itself. By and large every section of public, political and religious opinion responded with commendable restraint which if sustained over the next few weeks could be a really great achievement.

However, that is a million dollar question, given the past record and known tendency of the extremist fringe to exploit every possible 'opportunity' of this kind. The content, context and wisdom of the puzzling judicial verdict lends itself to diverse and contradictory interpretations. There has been no dearth of opinions, from hailing it as an act of 'judicial courage' to condemning it as a 'panchayat raj

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\* *Kashmir Times*, 2 October 2010

decision'. To a layman, both seem almost equally convincing. Indeed, the 10,000-page judgment written by the three judges of the high court is so full of confusing conclusions that their individual interpretations become stretchable all too easily. For instance, the court was asked to pronounce on the ownership of the plot of land at Ayodhya. Instead of answering the simple question in clear cut terms, as judicial verdict is supposed to do, the judgment in this case is fraught with ominous implications. On the one hand it has ousted the claim of the Sunni Wakf Board but on the other it upheld it by awarding one-third share of the disputed property to the Board. Judicially, this position is irreconcilable, as much as it defies logic.

Similarly, the judgment holds that the birth place of Lord Ram is exactly under the central dome of the destroyed 3-dome structure (Babri Masjid) but relies on what is patently questionable inconclusive finding of the Archaeological Survey of India. Yet, it is this dubious part of the judgment that tilts the balance of not only the ownership dispute but the entire gamut of its political and ideological dimensions. The judgment looks to be an odd mixture of facts, mythology and principles. Perhaps the saving grace lies in that part of the judgment which by consensus of all the three judges says that status quo will prevail at the disputed site for next three months and that leave to appeal against the verdict is instantly granted to litigants. Prime Minister Manmohan Singh's statement rightly emphasized this point while counseling patience and restraint. There is no doubt that the case will land in the lap of the Supreme Court of India sooner than later. Obviously, the judicial process is yet to be exhausted in the six-decade old dispute. All that can be said at this moment is that the last word has not been said in the case, mercifully. The Allahabad high court judgment has created a piquant political situation for the central government. It was the Congress government of PV Narasimha Rao, in New Delhi when the Babri Masjid was demolished in December 1992, in gross violation of rule of law, civilized behaviour and political propriety.

The demolition marked the culmination of politically-motivated communal frenzy. Now when that act has virtually been 'sanctified' by

the Allahabad court verdict, there is again a Congress government at the centre. Deeper analysis of the judgment delivered on Thursday brings out a highly disturbing feature of Indian polity. It sanctifies lawlessness propelled by communal frenzy. Nobody can deny that the ideological packaging of LK Advani's Rath Yatra in the early 1990s that culminated in wanton destruction of over 400 year old Babri Masjid was anti-secular, anti-constitutional and it mocked at rule of law. The court verdict has virtually justified the 1992 demolition by declaring, on questionable findings, that the birth place of Lord Ram was indeed where the Hindus believed it to be and that the Babri Masjid had been built over the site of a demolished temple. The BJP whose stalwarts are facing criminal charges in the demolition case had every reason to exude satisfaction beyond their expectation. Given the propensities of the Sangh Parivar, it is only a question of time when they launch a more determined offensive to 'recover' 33, 000 sites of 'demolished temples' across the country. Ex-post judicial approval of the demolition at Ayodhya in 1992 is a boost to the campaign for 'restoring' temples identified by the Parivar.

The politico-ideological fallout of the Allahabad High Court judgment is going to pose toughest challenge to the Congress party and its government. The minority community's faith and confidence in the ruling party's will as well as capability to defend secularism and rule of law is now in more serious doubt. One Congress government connived in the demolition of the Babri Masjid and another one failed to prevent the dastardly act from being sanctified with judicial approval. Muslim minority has reasons to be more fearful after the verdict, notwithstanding restrained initial impact of the judgment. Triumphalism lies at the root of the Saffron ideology and Muslims have always been at its receiving end.

### **Ayodhya: The Redefining of India\***

The Babri Masjid-Ramjanmabhumi dispute has been one of the biggest influences in the shaping of independent India. It appears almost unreal

to remember that this is, in legal terms, a mere dispute over the title to a small plot of land in a nondescript historical town of North India. The land in question, on which stood a medieval mosque, belongs to the Sunni Wakf Board, while the Ramananda sect of Ayodhya claims that it is the site of the birth of the Hindu God Rama, and so it should be given to them to build a temple. This is not exceptional in India where many sites are claimed by different religious traditions as their own, sometimes competing but often coexisting.

In 1949, during the troubled period after Partition when the Muslim minority of Uttar Pradesh was particularly vulnerable, idols of Ram and his consort Sita were installed inside the Babri Masjid. The district collector, who later contested the parliamentary elections on a Bharatiya Jan Sangh ticket, pointedly refused orders from Prime Minister Jawaharlal Nehru and UP Chief Minister G B Pant, to remove the idols from the mosque. He also attached the Wakf property where the Babri Masjid stood and barred Muslims from coming within 300 yards of the monument, while allowing Hindus to enter the mosque and continue their prayers.

This set the stage for the legal battle between the Sunni Wakf Board which claims it was illegally deprived of the land and the building it owned, and those who wanted to make a temple on this land. It is this legal dispute on which the Lucknow bench of the Allahabad High Court will deliver a judgment on 24 September 2010, almost 61 years after the idols were smuggled inside the mosque. Although it is difficult to predict what the verdict will be, it is fairly obvious that one, or both, parties to the dispute will go on to the Supreme Court against the high court's order. Unfortunately, for the past two decades and more, this dispute has not remained a mere legal one, but has been the core of a violent political movement which has claimed the lives of tens of thousands of India's citizens in riots and massacres in communal violence as well as led to the destruction of the Babri Masjid, almost all planned and instigated by the proponents of this movement. This massive violence also helped spawn fundamentalist and violent politics of its own kind among the Muslim communities. The agitation over

the Ramjanmabhoomi dispute has in many ways changed the political, social and cultural fabric of the country.

This issue, single-handedly, provided the platform for Hindutva politics to expand its social and regional base to almost all parts of the country. The very name "Hindutva" emerged in common parlance through this movement to refer to the politics and ideology of Hindu nationalism, when earlier it was referred to simply as communalism. Instead of being seen as the anti-thesis of anticolonial nationalism in India, Hindutva gained a certain respectability and is now often seen as merely a variant of Indian nationalism.

The Ayodhya dispute helped the Bharatiya Janata Party (BJP) to become the principal opposition to the Congress while previously that opposition space had been occupied by parties of the left, both socialist and communist. In that sense, the Ramjanmabhoomi movement led to the structural shift in the centre of gravity of India's polity from centre-left to centre-right. More importantly, by bringing the BJP to power, it allowed the Rashtriya Swayamsevak Sangh (RSS) and its "family" to infiltrate the institutions of the Indian state and entrench their reactionary agendas in them.

The mass appeal of the Ayodhya agitation bestowed respectability on the Vishwa Hindu Parishad and helped them push retrograde agendas to the forefront. They managed to push back many progressive agendas and, for the first time, brought the issues of secularism and democracy into contention. It was possible now to openly demand a "Hindu" state, the revocation of secular laws, the scrapping of constitutional protection for minorities and to attack democratic institutions. Not only did the Ayodhya agitation shift the political anchor to the centre-right, it also shifted the dominant political discourse from one based on rights and entitlements to one based on identity and primordial associations.

Some movements managed to meet this challenge, such as the women's movement which changed its demand for a universal civil code to one of democratising the personal laws of each community.

Other progressive movements did not fare as well: the land question

in the rural areas got sidelined with the emergence of identity politics, while the vacuum created by trade union decline in urban areas was filled by Hindutva and other such movements. But the struggle to defend the secular, democratic and liberal aspects of the Indian republic also helped progressive movements—both political and social—to work out strategies to fight right reaction. The public contestations over definitions of nationalism, secularism and democracy have also helped to enrich the movements.

### **Unique opportunity for an amicable resolution\***

The verdict on the disputed Ayodhya land is out from the basket of the Allahabad High Court, but the verdict is yet to be accepted by all the parties of the litigation. Has the verdict gone in favor of any party out of three fighting for the land including the central place where presently the idol of Lord Rama has been kept? After so many controversies on the doubtful character of the claims made by all parties, mainly two major religions namely the Hinduism and the Islam, the court ruling does not seem to have in favor of any religion. The third party, incidentally a Hindu group, the Nirmohi Akhada, also has been given the equal importance by the Judges of the Lucknow bench in Allahabad High Court.

The verdict, according to M J Akbar, the Editorial Director of India Today, the judgment is one of the most acceptable one that should not be discarded by any of the three parties. The entire land has been divided equally into three parts and each party to get one part leaving no discrepancy in the division. But, this is not the only criterion in the case. The other important contention is the place where the Babri Masjid was situated and where underneath the idol of the revered God Ram sits. The court did not forget this part anyway, and has given the place to the Hindus to construct the Ram Mandir on that spot.

The Sunni Wakf Board now can make the masjid in the allotted site, which is not acceptable to them. It is contemplating to appeal to the higher court that is the Supreme Court against the verdict of the

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\* M J Akbar, *India Today*, 30 September 2010

Allahabad High Court. Are the Hindus happy with the verdict? It does not seem so, since they too are going to appeal for something else that they did not get through the High Court verdict.

The HC has cited ample documental proof making it clear that no mosque existed in that place of dispute. Therefore, its verdict is difficult to cross in the Apex Court, I believe.

The animosity between the two religion groups in India could be brought to zero if and only if the honest intention is present in both the parties. People of India cutting across all religion have more or less welcome the verdict, which is also Akbar feels a good one. This opportunity of reestablishing the harmony should not be missed for the stubborn attitude of some leaders in both sides.

### **Intriguing compromise could work\***

The majority verdict of the Allahabad High Court on the Ram Janmabhoomi-Babri Masjid dispute is a compromise calculated to hold the religious peace rather than an exercise of profound legal reflection. This search for a compromise informs the orders of Justice S.U. Khan and Justice Subir Agarwal even if they would seem to stretch the law and, at times, logic as well. The third judge, Justice D.V. Sharma, decided that the disputed structure could not be regarded as a mosque and ruled in favour of the Hindu plaintiffs. The effect of the majority judgments is that the disputed land of 2.77 acres is to be divided equally among the two Hindu plaintiffs, the Nirmohi Akhara and Bhagwan Sri Rama Virajman, the deity regarded as a jurisdic person that can own property, and the Sunni Central Board of Waqfs U.P. The portion of the inner courtyard where the central dome of the Babri Masjid stood before its demolition and where the makeshift temple now exists is to be given to the Hindu plaintiffs. The rest of the area where the Babri Masjid stood, including part of the inner courtyard and some part of the outer courtyard, is to be allotted to the Waqf Board. The Nirmohi Akhara is to be allotted the buildings that stood in the outer courtyard

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\* *The Hindu*, 1 October 2010

of the premises, including Ram Chabutra and the Sita Rasoi, while it is to share the unbuilt area of the outer courtyard with Bhagwan Sri Rama Virajman. To facilitate such a three-way division, and also to provide access, some part of the land acquired by the Central government around the disputed land could be used.

In arriving at his decision on the three-way division, Justice Khan has concluded that the disputed structure was a mosque constructed by or under orders of Emperor Babar and that it was built not after demolishing any temple but on an area where some temples were already in ruins. He notes that before the mosque was constructed, the Hindus believed that somewhere in the large area of land where the Babri Masjid came to stand later was the spot of birth of Lord Ram. After the mosque was constructed, they came to believe that the place where the mosque stood contained the birth spot, and much later in the decades before 1949 they came to identify that spot as the one under the central dome. He also holds that much before 1855, the adjoining Ram Chabutra and the Sita Rasoi existed and Hindus were worshipping there. According to his finding, the idol of Lord Ram was placed for the first time under the central dome of the Babri Masjid in the early hours of 23 December 1949. In view of the side-by-side worship and joint possession of the disputed site, he would declare both parties as joint title holders. However, that part of the land under the central dome of the Babri Masjid where the idols were placed and the makeshift temple now stands after demolition would be allotted to the Hindus.

However, Justice Agarwal who also favoured the division of the land differed from Justice Khan on some critical issues. He does not find evidence of Babar having built the mosque or any material to support the exact date when it was built, though he finds it was in existence before 1776. He finds also that the idol had been placed under the central dome on 23 December 1949 but wants that spot to be allotted to the Hindus. The Sunni Central Board of Waqfs is to get no less than one-third of the total area in dispute, including the rest of the area on which the mosque stood and some part of the outer courtyard. Justice

Sharma finds that the idol was placed under the central dome on 23 December 1949 but in his other findings and conclusions he differs radically from his fellow judges on the Bench. He has ruled that as the disputed structure was built against Islamic tenets, it could not be regarded as a mosque.

At one level, from the standpoint of political morality, the verdict could be viewed as partially rewarding those who placed the idol overnight under the central dome of the mosque and those who in 1992 razed it to the ground. Nevertheless, the confusing mass of findings the reasons for which are not entirely clear and the compromise nature of the verdict along with the substantive outcome of dividing the disputed land have restrained any party from claiming outright victory or sulking in total defeat. The Sunni Waqf Board and the Sri Ramjanmabhoomi Trust have indicated that they would appeal against the verdict to the Supreme Court.

All sections of political opinion had issued appeals for calm and restraint on the eve of the verdict but apprehensions of disturbances remained, and a last minute effort was made to halt the judgment. The Supreme Court struck a blow for the rule of law and decided that the judicial process that has been winding slowly over the last 60 years ought not to be halted at the last minute for fear of disturbances and under some imaginary hope of the parties arriving at a negotiated settlement. If overall the reaction from the public and from large sections of political opinion has been subdued, much of it has to do with the mood of the nation in which the Ram Janmabhoomi-Babri Masjid issue does not find much traction any more—in striking contrast to the 1990s. On balance, the nature of the Allahabad High Court verdict should help the nation as a whole put a longstanding dispute behind. Secular India needs to move on and not be held hostage to grievances, real or imaginary, from the distant past. A great deal of the responsibility lies with political parties and religious groups to maintain harmony in the face of fundamentalist forces seeking to disturb the peace and profit from raising communal issues. They ought not to allow revanchist sentiment and any talk of revenge to come to the fore as many of them did in the

1980s and 1990s by their passivity or collaboration. For too long has the Ayodhya dispute remained an obsession with large sections of the people. It is to be hoped that after this major, even if not final, step in the judicial process it will cease to occupy the political stage.

## Interviews

### **Another fall and we may not rise again: Justice S U Khan\***

“My judgment is short, very short. Either I may be admired as an artist who knows where to stop, particularly in such a sensitive, delicate matter, or I may be castigated for being so casual in such a momentous task. Sometimes patience is intense action, silence is speech and pauses are punches.”

This is the epilogue at the end of Justice S U Khan’s 285-page judgment in the Ayodhya title suits.

He reminds both the warring factions that “the one quality which epitomised the character of Ram is *tyag* (sacrifice).” “When Prophet Mohammad entered into a treaty with the rival group at Hudayliyah, it appeared to be an abject surrender even to his staunch supporters. However, the Koran described that as clear victory and it did prove so. Within a short span therefrom Muslims entered the Mecca as victors, and not a drop of blood was shed.”

Admiring “our resilience” post demolition, Justice Khan warns,

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\* Sanjay Singh interviews Justice Khan for *The Indian Express*, 1 October 2010

“We must realise that such things do not happen in quick succession. Another fall and we may not be able to rise again, at least quickly.” Today the pace of the world is faster than it was in 1992. He further says, “We may be crushed.”

Justice Khan says he did not delve too deep into history and archaeology, for four reasons. “Firstly, this exercise was not absolutely essential to decide these suits. Secondly, I was not sure as to whether at the end of the tortuous voyage I would have found a treasure or faced a monster (treasure of truth or monster of confusion worst confounded). Thirdly, having no pretence of knowledge of history I did not want to be caught in the crossfire of historians,” Justice Khan writes.

Regarding his fourth reason, he quotes the SC’s ruling in the Karnataka Board of Waqf vs Government of India—“As far as a title suit of civil nature is concerned, there is no room for historical facts and claims. Reliance on borderline historical facts will lead to erroneous conclusions.”

Justice Khan also quotes Iqbal: “*Watan ki fikra kar nadan musibat aane wali hai, Teri barbadiyon ke mashware hain aasmanon mein. Na samjhoge to mit jaoge Hindustanwalon, Tumahari dastan tak bhi na hogi dastanon mein* (Worry for the country, or you will be wiped out).”

He goes on to quote Darwin, remarking, “What an authority to quote in a religious matter/dispute!”

“Only those species survived which collaborated and improvised,” Justice Khan points out. He writes in his epilogue, “Muslims must also ponder that at present the entire world wants to know the exact teachings of Islam in respect of relationship of Muslims with others.”

He further observes that Muslims enjoy a unique position in India. “They have been rulers here, they have been ruled and now they are sharers in power. They are not in majority but they are also not a negligible minority.”

Justice Khan points out that this is different from other countries, where Muslims are either in a huge majority—making them indifferent to the problems in question—or a negligible minority, which makes them redundant.

“Indian Muslims have also inherited a legacy of religious learning and knowledge. They are therefore in the best position to tell the world the correct position. Let them start with their role in the resolution of the conflict at hand.”

### **Faith has no meaning in a court: Rajinder Sachar\***

Justice Rajindar Sachar, former Chief Justice of the Delhi High Court, has emerged as one of the most critical voices against the Ayodhya verdict. The author of the Sachar Committee report, which documented the poor conditions of Indian Muslims, says the judgment delivered by the Lucknow Bench of the Allahabad High Court on September 30 follows no legal precedents and has done injustice to the Muslim community by rewarding the Sangh Parivar, whose constituents demolished the Babri Masjid.

**Q: The Ramjanmabhumi-Babri Masjid dispute is not just a religious dispute but has occupied political imagination in India for the past two decades. How do you perceive the verdict?**

**A:** The judgment can be summed up in two words: crime pays. In 1992, a crime was committed. The Babri Masjid was demolished. But assume that the crime was not committed and the matter had gone to court. Do you think the court could possibly, under any circumstances, order that the land be divided? Frankly, the grounds on which the organised Hindutva plaintiffs went and asked for land, they should have been thrown out on the grounds of remediation. You see, the masjid was there since the 16th century. They filed the suit only recently [in historical periods]. The Limitation Act dictates that a suit could be filed within a period of 12 years from the date of dispute. Legally speaking, the Sangh Parivar does not have a right even if a temple had been demolished to build the Babri Masjid, as the masjid existed before the period of limitation.

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\* Ajoy Ashirwad Mahaprashasta, V V Krishnan interview Rajindar Sachar for *Frontline* Volume 27-Issue 21 October 09-22, 2010

I have been writing since 2003 that a precedent to this case exists. [Quotes from one of his research papers] ‘There was a masjid called Shahid Ganj in Lahore decided by the Privy Council in 1940. In the case, there was admittedly a mosque existing since 1722. But by 1762, the building came under Sikh rule of Maharana Ranjit Singh and was used as a gurudwara. It was only in 1935 that a suit was filed claiming that the building was a mosque and should be returned to Muslims. The Privy Council, while observing that ‘their Lordship have every sympathy with a religious sentiment, which would ascribe sanctity and inviolability to a place of worship, they cannot under the Limitation Act accept the contentions that such a building cannot be possessed adversely’, went on to hold that ‘the property now in question having been possessed by Sikhs adversely to the waqf and to all interests thereunder for more than 12 years, the right of mutawali [caretaker] to possession for the purposes of the waqf came to an end under the Limitation Act.’

At that time, the court noted that the site was undoubtedly a gurudwara. It was not a question of demolition. The Babri Masjid is a much more political and sensitive site, as it was made out to be.

By parity of reasoning, even if a temple existed before the building of the masjid 400 years ago, the legal suit by the Vishwa Hindu Parishad and others must fail. On the contrary, the court dismissed the plea of the Sunni Waqf Board, which was valid under the Limitation Act.

Then, there is a second aspect. There is no clear finding that a temple existed beneath the masjid. Most people noted that there may have been ruins of some temple. The country's polity spans a period of around 5,000 years. Many Buddhist temples were destroyed to build Hindu temples and masjids. Some mosques were also demolished by some Hindu kings. Not because of any religious considerations but because of political compulsions of that time. Does this mean that you will secure the sanctity of all this through demolition and reclaiming? In the Babri Masjid case, there are contradictory opinions of many historians that there was no temple there at any time. How can a court decide on a dispute based on the Hindu faith that it is believed to be the birthplace of Ram? In a court, faith has no meaning.

Then, there is a third aspect. Whether Muslims build a mosque or not is a different question. That is a Muslim choice. But since a mosque was demolished, the land should have been returned to Muslims. Many young people are disappointed. Many Muslims said they could have built a school or a hospital for all communities on the land but the land should not have been divided. The argument that the land should not go back to Muslims is not understandable. Even the Quran, it is said, says Ram and Krishna were prophets and Muhammad was the last prophet. Many Muslim scholars have come to this conclusion.

The judgment is ridiculous. Let us accept the controversial Archaeological Survey of India [ASI] report that there was a temple there. The Muslims could have also accepted. They could have chosen not to build a mosque there but the land should have been given to them. They could have built anything on it. It is their human and communitarian right. Even if the temple was destroyed, does displacing Muslims from a 500-year-old shrine make sense? The court is not competent to judge historical events.

**Q. The judges have quoted faith extensively. Your comments.**

**A:** That is what I was saying. This is their finding that Hindus believe that the disputed site was the birthplace of Ram. In the process, they legitimised right-wing history, so controversial in historical polemics.

**Q. How far can you go back to correct history even if you take religious faith into consideration?**

**A:** In a secular country like ours, it is totally impermissible. I don't want to use a strong word but it is a political dishonesty. Our political parties refused to take a stand. The demolition wouldn't have taken place at all had the government taken a stand. Now each of these parties is saying that let the court decide. It is a political issue. In all the important areas of governance, the political parties say that the court should not interfere. But now, it is very convenient for every party to say that the court can decide. Political parties should take a stand. This is secular India after all. Judiciary has to hear a suit, give a finding. But in this case, neither legal precedents nor common laws were taken into account. The judges acted as guardians instead of ensuring justice.

**Q.** The Sangh Parivar has indicated that it will revive the Ramjanmabhumi Movement. This could lead to polarisation among religious communities. Has the judgment made a dent in the principle of judicial neutrality and objective rationality?

**A:** It is undoubtedly a pro-Ramjanmabhumi judgment, inclined towards the majoritarian view. The Sangh Parivar is sensing a victory in it. But it would not be correct to castigate the entire judiciary as such. It definitely creates a dent in its reputation. The fact of the matter is that the images of *Ram Lalla* were placed there in 1949. It was an act of piracy. Muslims had been praying there for a long time. It was a mosque. When a Hindu idol was installed, it was natural for Muslims not to pray there as worshipping an idol is against their religious ethics. That is why they stopped going to the Babri Masjid. That does not mean that their rights had gone. In 1949, the court had prohibited any kind of worship there. But now the court has ruled that in 1528 a temple was destroyed, thereby legitimising a controversial ASI report. Even if a temple was destroyed, you cannot come to the conclusion that the Babri Masjid was illegal.

**Q.** This was a civil case of title dispute. But the matter is so politically sensitive that it indirectly legitimises the Babri Masjid demolition, which was a criminal act. What do you have to say about this?

**A:** Yes, this judgment has damaged a lot of things and made a dent in the secular ethics of India. It is like saying: destroy the mosque and give it to the Hindus. Two-thirds of the land is effectively going to the Hindus. Faith can be no grounds to reach a decision in a court of law.

The media have been asking the people to move on. Where should we move on? And move to what? You can't forget a crime. A court of law has to ensure that you cannot get away after committing a crime. The Muslims' right to their property is being taken away. The common law says that if a son kills his father, he is not entitled to inherit his father's property. But here the goons who demolished the mosque got what they wanted.

**Q.** As the author of the Sachar Committee report, you have documented the poor conditions of Muslims. What kind of message has

the minority communities got from such a judgment?

**A:** It will be a very dangerous message, of course. It is time the secular political parties took a stand. In 1946, Bihar was in flames. It was hit by Hindu-Muslim riots. Pandit Jawaharlal Nehru publicly wrote a letter that if the riots did not stop he would bomb the rioters from Delhi. Bihar was a Muslim League constituency, and the League was fuelling the riots. But the larger vision of political parties prevented a lot of mess. The state had to take a stand and reaffirm its secular ethics as granted by the Constitution. However, it is good to see that the organised Muslim opinion is adopting a healthy approach. But you can't tell them, as the media have been doing, to forget everything. It is a question of the community's belief in the system and India's polity. The good thing is that their reactions have been very restrained.

Why should the Muslims be asked to move on? The same question can be posed to the Sangh Parivar. Why don't they move on? Even with this judgment, they are feeling victorious but not satisfied. They want to build a Ram temple on the entire land there. If it is a question of Hindu sanctity, is it not a question of Muslim sanctity, too? To me, this judgment is a surrender to the rabid communal sentiment. It is only the weakness of political will that is responsible for the Ayodhya imbroglio.

### **Faith not law ruled: Asghar Ali Engineer\***

There are many saner elements in both the Hindu and the Muslim communities who want to move on, who do not want to be stuck with the Ramjanmabhumi Babri Masjid controversy. It was basically the BJP that raised the issue and took it to such a high pitch several years ago while a section of the Muslim leadership saw in it, an opportunity to promote themselves at that time.

The Muslim leaders thought that they would become big leaders by inciting Muslim passions while the BJP made it an electoral issue. So the whole issue was politicised and nobody cared about history or facts.

\* Parul Chandra interviews scholar Asghar Ali Engineer for *The Asian Age* 5 October 2010

The dispute is actually a fight at two levels. At one level, politically speaking, it is a fight between secular and communal forces. At another level, legally and historically speaking, it is a legal fight which should be settled only in the courts and not brought onto the streets. We should see the dispute at both levels and not make it a Hindu-Muslim fight.

Unfortunately, the political leadership on both the sides though more so on the part of the BJP, wanted to project it as a major political issue in order to grab votes. A section of the Muslim leadership too saw the opportunity to promote itself. I told them, "Why don't you project the Gopal Singh Report—it had written about the status of Muslims and Dalits much before the Sachar Report came and pressure the government into doing something for Muslims, rather than fighting this battle which you'll never win.

I would very much welcome a negotiated settlement outside the court in order to resolve the issue and not allow it to drag on for years. However, I'm afraid that this is not the spirit on either side. In the year 2000, the Sankaracharya had taken the initiative to bring about reconciliation and the All India Muslim Personal Law Board (AIMPLB) had readily agreed to negotiate. But the Sangh Parivar surrounded the Sankaracharya's math and stopped him from going ahead. It means that even if one party agrees to give in, the problem cannot be solved. It's an issue that should be resolved with full honour and dignity I hope that the Supreme Court is finally able to deliver a clear legal verdict for either side. Both the sides involved in the dispute need to accommodate each other.

However, the court needs to deliver a clear pronouncement stating who the land title belongs to. If the verdict goes in favour of Muslims, they should come forward and say that they won't cause annoyance to their Hindu brothers and even let them build a temple in one portion. Apart from the mosque, a national building like a library or a centre to promote communal harmony could be built .

And if the verdict is in favour of the Hindu parties, they can build a temple on the entire disputed land. They need not even say that a mosque will be built. They have every right to build a temple

and I don't think Muslims would resist it. But what's needed is a clear juridical pronouncement. Judges cannot invoke "faith", even if it is their profound faith, while delivering their verdicts. They should go only by facts and legal points. The Lucknow bench's verdict has again posed a legal challenge. The judgement is being seen more as a panchayat faisla (decision) than a legal verdict. This is what I feel too. How can the judges invoke "faith"—that this is the belief of Hindus that this is Ramjanmabhumi. A decision should be given on the basis of legal points.

I think technically, juridically and historically, the Lucknow bench's order is in the spirit of reconciliation. Many eminent historians I know including Professor Suraj Bhan, an eminent archaeologist, said that there is no shred of evidence to indicate that a temple existed before Babri Masjid. On the contrary, the excavation indicates Muslim inhabitation there before any temple or anything. Historian Irfan Habib maintained that there's no evidence to indicate that there was any temple.

### **Far removed from the secular universe: Anupam Gupta\***

**Q. How will you characterise the three judgments?**

A. The nation has been preoccupied with the ultimate relief granted. National attention has been completely distracted from the essential premises of the full Bench. I am convinced that both Justices Agarwal and Sharma operate in a time warp of their own—far removed from and completely insulated from the secular universe of free India.

Justice Sharma speaks candidly as a Hindu devotee and much of what he has said on various issues carries a grim echo and reflection of the main arguments and grievances of leading protagonists of the Ayodhya movement before the Liberhan Commission. Take for instance an issue framed in the suits—whether the structure called Babri Masjid can be actually called a mosque or not. While Justice Agarwal, to be fair to him, holds back on this issue and rules that whatever be the causes

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\* V Venkatesan and Venkitesh Ramakrishnan interview Anupam Gupta for *Frontline* Volume 27, Issue 22, 23 October - 05 November 2010

of the construction of this mosque, and the anomalies between this and other mosques (it does not have a minaret, etc), he believes it is futile to go into these and that it has to be treated as a mosque.

Justice Sharma, on the other hand, goes into minute aspects and holds that it is not a mosque constructed according to the Muslim tenets and, in fact, is not a mosque at all. The near-identity of this argument with that of the leading militant members of the Sangh Parivar before the Liberhan Commission is striking. The question then was: if it was not a mosque at all, why did they oppose it, launch a movement against it and bring it down?

There is a very simplistic absurdity about this entire argument. It is open for people to believe that Ram was born here, to believe that the mosque was constructed after demolishing a temple consecrated to Ram, to hate this as the insignia of slavery to the foreign oppressor. However, it is fundamentally inconsistent to say in the same breath that it is not a mosque at all. The entire debate centres on the fact that it is a masjid. Otherwise, it makes no sense.

In Justice Sharma's judgment, there is so much of *deja vu* hitting me—unsophisticated, unabashed, unalloyed, unreasoning fundamentalist Hindu perspective.

The author of the leading judgment is Justice Agarwal. His is a monumental feat in judgment-writing: fairly controlled, self-contained, lucid and coherent throughout the 21 volumes. Having said that, I have no doubt in my mind that he is as firmly rooted in the universe of stern orthodox Hinduism as Justice Sharma.

Justice Khan differs radically from the other two judges in the essential postulates of his judgment. However, at the end of it all (page 275 of his judgment), he observes that in the matter of actual partition, it is desirable but not necessary to allot to a party property in his exclusive use and occupation. Even though he finds that Muslims had possession of the domes and Hindus only of the chabutra outside, he allots the central dome to Hindus rather than to Muslims. He justifies this by citing Charles Darwin as saying that only those species survive that collaborate and improvise. In other words, the judge being a member

of a minority community must collaborate with the majoritarian sentiment in order to survive. The improvisation effected by him is an inversion of architecture and geography, the reversal of the basic principle of partition.

Darwin does not support majoritarianism at all. A new biography on Darwin published last year, *Darwin's Sacred Cause: How a Hatred of Slavery Shaped Darwin's Views on Human Evolution* by Adrian Desmond and James Moore reveals how deeply he and his entire family were committed to the abolition of slavery and racialism.

**Q. Do you think it would have been impossible for the court to go into the historical question whether there was a Ram temple beneath the demolished Babri mosque or whether Ram was born at the spot where the makeshift temple now stands?**

A. Yes and no. To be fair to the court, it cannot be blamed if the parties join issue or enter contest on a particular point. The court is not to be blamed for that. However, the court has every option, a vast range of judicial discretion, on how it should address and answer the issue. With both sides wrestling over history, the court could have returned a finding that it is virtually impossible to answer this one way or the other.

My last question to the last witness before the Liberhan Commission, former Uttar Pradesh Chief Minister Kalyan Singh, related to the ASI report. Kalyan Singh placed before the commission the last chapter of the ASI's report in support of his stand on the Ram temple. Between the body of the report and the last chapter there is a fundamental difference. The last chapter is a quantum jump from the earlier narrative chapters. Conclusions, glibly and facilely drawn about a massive structure, bearing the imprint of a Hindu temple beneath the tomb beg the entire question. The concluding inferences drawn by the ASI were custom-made to suit the Ayodhya strategy of the then Bharatiya Janata Party government. The political misuse of archaeology as a scientific discipline is fraught with serious implications.

Justice Agarwal displays a strong intellectual and emotional bias against the progressive, left-leaning academics in the discipline of history and archaeology and accuses them in so many words of being

communists or Marxists, as if being so is a crime in itself.

Whether even the Supreme Court can deal competently with matters of history or archaeology will remain a question mark. However, when an issue arises before the court, the court cannot refrain from resolving it. But it should do so with intellectual humility. This is missing in Justice Agarwal's appraisal of the objections to the ASI report. Suraj Bhan, D Mandal and other scholars who testified against the report are all reduced to a communist or Marxist cabal hired by the Muslim side in order to prove their case. He surrenders judicial objectivity to ideological bias.

**Q. How did the court come to understand the issue before it in terms of faith or belief?**

**A.** Actually, issue No 11 in the leading suit No 4 reads thus: "Is the property in suit the site of Janambhumi of Sri Ramchandraji?"

Obviously, this was a question of historical fact. However, according to Justice Agarwal, this issue required the discharge of an impossible task and had necessarily to be treated as follows: "Is the property in dispute the site of birth of Shri Ramchandarji according to traditions, belief and faith of Hindus in general?" This is how he recast the issue while answering it in his judgment, transforming the issue beyond recognition. This is possibly the most fateful part of the judgment.

**Q. Were the judges correct in the way they dealt with Deoki Nandan Agarwal's suit on behalf of the deity (suit filed in 1989)?**

**A.** The concept of an idol becoming a litigant is borrowed from Roman law. Keeping the larger interests of the believing public in mind, it was considered necessary historically to endow the deity with a fictitious legal personality so that the maintenance and preservation of properties dedicated to the God is facilitated. There is no doubt that the Hindu idol or deity has a legal or juristic personality. To that extent, the judges are right. But they proceed further to hold that not only the idol but even the place where it is kept is a juristic personality and has a legal persona of its own. There is absolutely no justification in principle or in judicial precedent for this complete novelty. Nothing illustrates the deep and pervasive religiosity underlying the judgment of both Justices

Agarwal and Sharma than this finding.

**Q.** How did the judges declare the Sunni Wakf Board's suit filed in 1961 as time-barred? How did they justify that *Ram Lalla's* suit, filed in 1989 through his next friend (Deoki Nandan), was not time-barred?

**A.** The concept of limitation is one of the great technicalities of jurisprudence. Even though someone's right has been infringed upon, he is denied a judicial remedy if he approaches the court beyond the period prescribed under the Limitation Act. This is because the law discourages "stale" claims and refuses to protect those who are not vigilant enough about the violation of their rights.

So far as the 1989 suit is concerned, Justice Agarwal (in para 2,617) expresses his difficulty in understanding the cause of action for filing it. Again, in para 2,630, he holds that there is no substantial threat necessitating the filing of the suit by *Ram Lalla* and, therefore, the right to sue does not accrue to it. Reading both these observations together, which are a tribute to his professional competence, it is apparent that the 1989 suit disclosed no cause of action. That being so, the suit was liable to be rejected summarily under Order 7 Rule 11 of the Code of Civil Procedure. However, the irony is that Justice Agarwal uses this not to reject the suit but to reject the Muslim objection that the suit is time-barred. According to him, the limitation for a suit for declaration (under Article 58 of the Limitation Act) has to involve a violation of a right, which gives rise to a right to sue. Since no right was violated in the 1989 suit he held that limitation did not begin to run against the plaintiff.

The paradox in this finding is that it displaces the suit altogether. Logically speaking, such a finding should entail the summary rejection of the suit itself for failure to disclose a cause of action.

Justices Agarwal and Sharma also accept—while Justice Khan holds to the contrary—the concept of perpetual minority of a Hindu idol. Section 6 of the Limitation Act provides an exemption from the normal running of limitation. It covers persons under legal disability, namely, minors, insane persons and idiots. They, therefore, treat the Ram idol as a perpetual minor in order to save the 1989 suit filed by the next friend of the deity.

This question was first raised in 1926 before a Division Bench of the Allahabad High Court in *Chitar Mal vs Panchu Lal* (AIR 1926 All 392). The court ruled against any such doctrine of perpetual minority of an idol. Justice Khan cites from the book *The Hindu Law of Religious and Charitable Trusts* by Justice B.K. Mukherjee—a renowned authority, cited also by Justices Agarwal and Sharma to support their other conclusions—that the analogy between a Hindu idol and a minor is not only incorrect but positively misleading.

### **Wakf Board's Suit**

As far as the suit filed by the Sunni Central Wakf Board is concerned, the claim for possession in this suit was in fact the only true and proper relief to be sought. The claim for declaration was a relief in aid of the main remedy of dispossession. The Muslim cause of action was their dispossession by Hindus in December 1949 when the idols were implanted in the masjid. A suit for possession is maintainable within 12 years of the dispossession under the Limitation Act. Justice Agarwal holds that just because the idols were placed Muslims were not completely dispossessed.

Therefore, according to him, the provision in the Act dealing with suits for possession does not operate, as that requires complete dispossession.

**Q. This finding, on the face of it, is untrue and unfair. Following the installation of the idols in December 1949, Muslims lost access to the Babri Masjid. In what sense, therefore, did possession remain with Muslims after December 1949?**

**A.** The other reason why the suit was held time-barred is that it has been treated to be a suit for mere declaration, ignoring the claim for possession. The limitation for declaration was six years under the old Limitation Act then applicable. Muslims wanted a declaration that the site in question was the Babri Masjid and Hindus had no right to it. The judges have relied upon the attachment of the disputed premises by the magistrate under Section 145-146 of the Criminal Procedure Code to ignore the claim for possession. They hold that when a property is under attachment, it is deemed to be in legal custody and no suit for

possession is required; only a suit for declaration is sufficient. All the three judges agreed on this point.

In my view, the question of possession in this case is a much larger issue and cannot be limited to the narrow confines of Sections 145-146 CrPC, which deal with ordinary disputes. To view the dispossession of Muslims in December 1949 only on the premise of attachment is too limited a perspective.

**Q. These judgments also dismiss the legal challenge to the district judge's 1986 order unlocking the Babri Masjid. Considering that opening the locks of the masjid before the settlement of the title dispute paved the way for its demolition in 1992, should the court have ignored the illegality of this order?**

A. The great merit of Justice Khan's judgment is how he demonstrates that the 1986 order for opening the locks was both politically and judicially malafide. In his separate nine page order, Justice Sharma strongly affirms the 1986 order, holding that Hindus were already in possession of the site since 1950, and that the structure had already been demolished and the order only maintained the control of Hindus. He thus legitimises the illegality of both December 1949 and December 1992. Justice Agarwal refrains from expressing any opinion on this matter since the main suit itself had been decided, the 1986 order being an interim order that could not outlive the final decision. His is an example of discretion being the better part of valour.

**Q. What are the limits of Article 25? Can the argument of essential aspects of religion be stretched to include beliefs under Article 25, which guarantees the right to profess and practice religion freely?**

A. There are two aspects of this matter. Article 25 is not an absolute right but a highly qualified right. It has been made expressly subject not only to public order, morality and health, but also to "other provisions" of Part III of the Constitution. In other words, the right under Article 25 has to be reconciled with all other fundamental rights. Article 25 is not an island of immunity, in the name of religion, but has to be reconciled with the other fundamental rights guaranteed by the Constitution. Secondly, it confers the right to freedom of religion equally on all religions.

To limit Article 25 to Hindus is to subvert its essential character and defeat its very purpose. Muslims, equally with Hindus, are entitled to Article 25. The provision cannot be invoked to transplant or impose the beliefs and practices of one religion upon the adherents of another.

### **A Dangerous Precedent: Prakash Karat\***

The Communist Party of India (Marxist) has been one of the most vocal critics of the demolition of the Babri Masjid. Like many other secular political parties, the CPI(M) has expressed surprise and dismay at the importance given by the Allahabad High Court to issues such as faith and belief in its verdict. In an interview given to *Frontline*, CPI(M) general secretary Prakash Karat opined that any judicial verdict had to be firmly grounded in secular, democratic and constitutional principles. Excerpts:

**Q. What are your impressions of the judgment? Do you think there is something disquieting about it?**

A. Since the demolition of the Babri Masjid in 1992, the scope for a negotiated settlement has not existed. We have been maintaining that the problem can be resolved only through the judicial process and a judicial verdict. How we settle the Ayodhya dispute will be a test case for the democratic and secular basis of the Indian state. That is why we had rejected those claims from the Hindutva outfits that the building of a Ram temple is a matter of faith and cannot be decided by the courts. Now that the Lucknow Bench of the Allahabad High Court has given its judgment, we have to see if this judgment is going to settle the issue in a manner where justice has been done and the secular and democratic principles and methods of resolving such issues have been adhered to.

There is a general impression that the majority decision of the Lucknow Bench to divide up the 2.77 acres of land whereby two-thirds of the land goes to the Hindu petitioners and one-third to the Muslim side is a compromise solution and a step towards a settlement.

At the same time, a disturbing feature of the set of judgments is

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\* T K Rajalakshmi interviews Prakash Karat for PTI, 5 October 2010

the primacy accorded to “faith and belief”; originally what was being heard by the Lucknow Bench were the title deed suits, which required going by the facts and the evidence. A judgment on the dispute on where a mosque existed for four and a half centuries, and which was demolished in December 1992, is now being resolved on the basis of the faith and belief of a particular community. This is something that will create a dangerous precedent.

**Q. What kind of a precedent do you think this judgment can set, given the primacy that it has accorded to issues of faith and belief?**

A. It can open up many more such claims and disputes in the future citing the religious faith of some people. The Vishwa Hindu Parishad still demands the handing over of sites in Mathura and Kashi for religious purposes. The three judge Bench has unnecessarily framed issues which go beyond the jurisdiction of title deed suits. The Supreme Court had rejected a reference made by the President of India, which was at the behest of the P V Narasimha Rao government in 1993, where one of the issues posed before the court was whether a temple existed or not at the site before the mosque was built. The Supreme Court correctly refused to entertain such a reference. The Supreme Court then had revived the title deed suit before the Lucknow Bench of the Allahabad High Court.

**Q. What impact do you think this judgment will have on the ongoing cases involving the demolition of the Babri Masjid?**

A. Already the ongoing cases regarding the demolition of the Babri Masjid have been diluted. The charge sheets framed originally have been watered down. Still, the criminal offence of the demolition has to be decided by the law; the basis on which the judgment has been given by the Lucknow Bench does not augur well for the judicial proceedings on the demolition cases. There is already jubilation in certain quarters, cynicism among others, and the ruling political class opines that moving forward is the best solution.

Given the verdict of the Lucknow Bench, the matter will go to the Supreme Court for a final decision. No party to the dispute or any section of people can demand any step to be taken until the Supreme

Court gives the final judgment. The people by and large, irrespective of which community they belong to, want the matter settled through the rule of law. The demands made by the extremist fringe groups do not reflect the opinion of the general public.

**Q. What do you finally think will be the outcome of the judicial process?**

A. I think the Supreme Court will have to undo the premise on which a verdict has been given citing religious faith as the criterion for settling the question of ownership and recorded history of the dispute.

### **Against Settled Principles: Zafaryab Jilani\***

Zafaryab Jilani, counsel for the Sunni Central Waqf Board in the Ayodhya title suit and convener of the Babri Masjid Action Committee (BMAC), is known for the poise and equanimity he displays in trying circumstances. Excerpts from the interview:

**Q. Your initial reaction to the verdict was that it was partly disappointing. What exactly did you mean by that?**

A. Let me start by placing on record the sense of gratification at having completed the legal process in the High Court after six decades. It was a long process marked by arguments over arguments. That this completion has happened is the satisfying part of the verdict. The disappointing part rests squarely on the fact that it has gone against the settled principles of law and evidence. The honourable judges have arrived at a finding not on the basis of facts or evidence but on the basis of faith and belief. In other words, a new category has been introduced into the judicial process. I have not seen any verdict from any court of the country, whether it is the High Courts or the Supreme Court, which is based on a category that has no connection to any of our time-tested laws and rules, including the Evidence Act or the Criminal Procedure Code.

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\* Venkitesh Ramakrishnan interviews Zafaryab Jilani for *Frontline* Volume 27 Issue 21, 09-22 October 2010

**Q.** But there is the argument that the court was grappling with extraordinary circumstances that needed extraordinary judicial interpretations.

**A.** Even if that contention is accepted for the sake of argument, there can be no doubt that such interpretations cannot go beyond the parameters of law as established in the country and as practised in the courts. But here you are deciding upon something as legendary as the birthplace of a God.

None of the Hindu texts, including Ramcharitamanas, considered to be one of the most authentic accounts of the life of Lord Ram, pinpoints the birthplace of Ram. I am of the firm view that the personality of Lord Ram is not at all in dispute. He has been described as 'Imam-e-Hind' by the great poet of the East, Allama Iqbal, who had composed the *Tarana-i-Hind* (Saare Jahan Se Achcha Hindustan Hamara). But as far as my understanding goes, Hindu mythology has it that Lord Ram was born 12 lakh or 14 lakh years ago. Is it not a bit too much to pinpoint the location of the birth, as part of a modern judicial process, and that on the basis of faith and belief these many centuries later?

There is also the question as to when the belief on the janmasthan started. It does not seem that the belief was there before 1885 because Mahant Raghubar Dass of the Nirmohi Akhara is himself on record citing the structure as a mosque.

Another extraordinary step in the judgment relates to the theory of three-way division. Here, too, it is not clear what the rationale is or what principles have been cited to suggest partition of the land and premises. None of the parties had made a plea for a division of the land. And, moreover, it has been accepted that the idols were placed by extraneous forces inside the premises in 1949. Once that is accepted, the plea of the Waqf Board for the possession of the land after the removal of the idols becomes naturally strong. This has been presented to the courts forcefully since 1961, and even in 1995. But that plea seems to have not been considered at all. I am yet to see the full judgment but cannot think of any rationale for overlooking this plea.

Again, some of the campaigners for the Ram mandir in Ayodhya have made it clear that they will not allow a mosque even within the chauthakosi parikrama, which will mean many kilometres away from the site. Already, there are suggestions that Muslims should be large-hearted and give away even the one-third they may get. For us, this is nothing short of calling for surrendering the mosque. We will not accept that.

**Q. You are, of course, planning to go in appeal to the Supreme Court. What if the apex court affirms this....**

**A.** That is a hypothetical question, which is best left unaddressed at this point of time. Coming back to the merits of the High Court judgment, I would say it is a bad precedent to follow. What it would lead to is innumerable cases on the faith and belief principle. If this is taken as a precedent, claims can be made on any piece of property or structure or land saying that it is the faith and belief of one party or the other that it was the birthplace or the abode of one deity or the other. It would practically be an unending process. Some of the important buildings that house our constitutional institutions could face such claims on the basis of faith and belief.

**Q. Before the High Court verdict, you said this would not be about Hindus or Muslims but would reflect the victory of the rule of law and independence of the judiciary. You also said the cases relating to the title and possession of the Babri Masjid were apparently between the two communities but actually related to the secular fabric of the country. Looking back, what would you say now?**

**A.** I do not find any reason to alter this statement. The verdict is indeed about the secular fabric of our country and the rule of law. And we are approaching the Supreme Court. We have firm faith in the independence of the judiciary. That is also the reason for the repeated appeals by leaders of the community that they will not condone any violence or wrongdoing as a reaction. As I had said, our judicial process provides the opportunity and remedy to any party to the dispute who may feel dissatisfied with the judgment as a whole or with any portion thereof to approach the Supreme Court. That is the recourse we are taking in the near future.

### Seriously flawed: Rajeev Dhavan\*

Dr Rajeev Dhavan is a senior advocate of the Supreme Court who represented the Babri Masjid Action Committee before the Supreme Court. Excerpts from interview:

**Q. You have described the High Court verdict as panchayat justice. Can you explain?**

**A.** This was a title suit. The court has turned this into a partition suit. The question of title squarely lies with the Sunnis. They had taken over the mosque for over centuries. They have never lost titles. There was a continuity of ownership even if not prayer. On 22 December 1949, some idols were placed there. It was absurd to suggest they came in as a consequence of divination. Fortunately, the court has not gone that far. Therefore, the simple question was whether the Sunni Waqf Board filed its case within the limitation of 12 years. It was filed on 18 December 1961, within the limitation without adversely affecting the title of the Sunnis. The judgment appears to have unsuited the Sunnis on the basis that the title was never there and that, in fact, they have actual rights only over a part of the property. This was argued by none, requested or asserted by none, and came from the sweet will of judicial imagination.

**Q. Does the judgment also vindicate the destruction of the mosque in 1992 and the illegal installation of idols at the site in 1949? Does it hint that the very legal foundation of the existence of the masjid was infirm?**

**A.** There is a social significance to this particular finding. A mosque was destroyed on 6 December 1992. It was on Sunni land. On the basis of this judgment, it would appear that the entire status of the destroyed mosque was a legal chimera. In other words, the mosque was legally not supported to be there at all, and no act of sacrilege was committed. This is a convenient legal way of absolving the worst incident of mosque destruction in the world in our times.

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\* V Venkatesan interviews Rajeev Dhavan for *Frontline* Volume 27 Issue 21, 09-22 October 2010

Therefore, it is not just a narrow legal question, but one that goes to the heart of Muslim entitlement.

**Q. Does the one-third division of the property prove the court's inability to decide the title conclusively? Does the one-third arrangement give both Hindus and Muslims room to appeal for absolute ownership of the disputed land?**

A. If there was even an instance of panchayat justice without the benefit of panchayat consensus, it was this. One dissenting judge [Justice Dharam Veer Sharma] was in favour of Hindus on moral and historical sentiments. The other judge, Justice Sudhir Agarwal, seems to adopt the Hindus' sentimental entitlement. Justice S U Khan has some difficulty with the facts and ground realities. Yet the majority judges seem to have worked out a so-called workable solution for the future. Workable for whom? The core area goes to the Hindus. One-third goes to the Muslims, yet to be identified, and one-third goes to the Nirmohi Akhara, who but for its suit has no entitlement at all. It is not even half a division of the property. Two-thirds to Hindus and one-third to Muslims on the site that belongs to Muslims. This panchayati solution has no legal foundation, no moral justification, and it is not without insult to the claim of one community.

**Q. Is the judgment based more on faith than on legal evidence? Can the Hindus' moral right to prayer be turned into a legal right over property?**

A. Let me explain why it is not a good foundation for the future. What emerges from this highly intuitive panchayati decision is not just a matter of legal technicality. No legal suit for title is a technical matter. But is this a secure foundation for the future? Can there ever be truth and reconciliation on the basis of this verdict, which evaporates the rights of Muslims altogether? When Nelson Mandela saved South Africa, a Truth and Reconciliation Commission gave an opportunity to those who were guilty (in this case those guilty of destroying the mosque) to confess, to be contrite, to recognise the truth of the sacrilege, and then negotiate. On what basis will Muslims negotiate? They have been left empty-handed, and the correct approach would have been to recognise

Muslims' right to ownership. Hindu sentiment has a right to pray, and then with civility, request Muslims to make accommodation.

**Q. Does archaeological evidence point to the fact that Babar destroyed a temple to build a mosque? Was the court correct in concluding, on the basis of archaeological evidence that the mosque was built on the ruins of a temple?**

**A.** There is a great historical mischief underlying the judgment. One of the issues was whether Babar destroyed a live temple to build the mosque. One view is if that was so, the land becomes haram, weakening the case for Muslims' prayer. This mischief was started by B B Lal on behalf of the Sangh Parivar. The court seems to have come to the conclusion that there was a live temple there because pillars were found. This would require a lot of imagination, to make it the basis of such a historical conclusion. Justice S U Khan is uncomfortable with archaeological evidence. Other judges seem to accept it. In fact, archaeological excavations were badly done, not following the appropriate trench method. The correct conclusion has been demonstrated by B P Mandal and Shireen Ratnagar. These temples belong to a much earlier era. With this doubt, the moral denudation of the Muslim case proceeds on an even shakier foundation.

**Q. Is the three-way split a workable solution for maintaining peace and dignity? Will Muslims accept denuding of their right? Can a minority community be forced into a legal solution in which its full rights have not been recognised?**

**A.** This is not a proper judgment. It records what happened in a court by way of argument and proceeds not only to confirm a Hindu case on issues that no legal court was competent to answer but to destroy the moral and legal foundations of the right of Muslims. The Places of Worship (Special Provisions) Act, 1991, prescribes a cut-off date, 15 August 1947, making it mandatory to respect rights that existed on that date for religious sites other than the Babri Masjid. We should not hear Sangh Parivar fundamentalists saying Ayodhya today, Mathura tomorrow, and Varanasi the day after.

The judgment is so seriously flawed that history will be ill-served if

these errors are not set right. People outside India compare the destruction of the Babri Masjid with the destruction of the Bamian statues by the Taliban. Secular governance is incapable of remedying the travesty of destroying the mosque and denying even a shred to the people who owned the masjid and the site. India's democracy requires that minorities must be treated with the dignity and respect they deserve.

### **Muslims Should Take the Hint: Ravi Shankar Prasad\***

Ravi Shankar Prasad, the BJP's national general secretary and chief spokesman, represented the Hindu Mahasabha, which fought the case on behalf of *Ram Lalla Virajman*, the deity of *Ram Lalla*. Ravi Shankar Prasad explains how the concept of the deity being a party to a title suit is legally valid and why the way forward now is the route of reconciliation. Excerpts:

**Q. The verdict seems to be based more on faith and belief and less on historical facts and evidence. Is this a good precedent?**

**A.** The answer to this question lies in the specific points on which the court was to adjudicate. One of the points the court was supposed to look into was whether the disputed place was believed by Hindus to be the birthplace of Lord Ram and whether this was the place where they have been worshipping since time immemorial. Muslims never questioned the fact that Ayodhya is sacred to Hindus, they never questioned the fact that Ram was born in Ayodhya, and they never questioned the fact that Ram is divine to Hindus. Their only objection was to the exact place where Hindus believed Ram was born, and in this light the judges did well to look into faith and belief.

Let me add, the verdict about Ram having been born where the idols are placed and worshipped right now was given by all the three judges unanimously.

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\* Purnima S Tripathi interviews Ravi Shankar Prasad for *Frontline* Volume 27 Issue 21, 09-22 October 2010

**Q.** But making *Ram Lalla* a party to the title suit and even the court accepting this concept and ordering that one-third of the disputed land be given to the deity, how far is this legally justified?

**A.** The concept of deity as defined in Hindu religion is a legally accepted concept in law. I can quote at least 50 judgments to the effect that courts have accepted the existence of deity. A deity is a uniquely Hindu concept, which means a representative of God, which is one, omnipresent, permanent and inevitable. As per this concept the Ganga becomes a deity, the sangam of the Ganga and the Yamuna rivers is a deity, the entire Mount Kailas becomes a deity because Lord Siva is believed to be residing there. And this concept of deity is accepted by the law as well. It is legally valid and hence can be made a party to a law suit. It is also significant that all three judges have granted the plea of the deity, Justice Agarwal and Justice Sharma directly and Justice Khan indirectly.

**Q.** But when the court has accepted that the idol was put inside the masjid on the night of 22-23 December 1949, how can this idol be described as a deity?

**A.** By virtue of the Hindu faith, the Ramjanmasthan [the birthplace of Lord Ram] itself has become a deity, whether there was an idol or not. It is this concept of the janmasthan having acquired the status of a deity that the court has accepted.

**Q.** What next? How do you think the place is going to be divided in three parts? Is it feasible?

**A.** The only road forward is the road of reconciliation. Either you sit and talk things out or go to the Supreme Court and spend another 60 years debating the issue and then sit with an inch tape [in case the verdict is upheld] and measure one-third part for each. Even if you do it, it can never be done to everybody's satisfaction and a point of dispute will continue to exist. Since Muslims have never claimed that this mosque was an integral part of their faith, which *Ram Lalla* is for Hindus, the best option would be to sit down and talk and reconcile in the larger interest of all. This spirit of amity and reconciliation will be good for the larger canvas concerning all parties.

**Q. Do you think such reconciliation is possible because the other party might see it more as arm-twisting?**

**A.** That, unfortunately, will be an extremely skewed way of interpreting things, which is being done by pseudo secularists. Muslims should be wary of any such agenda and make good of this larger horizon that has been made available to them through the court for reconciliation. I am hopeful, saner and sober voices from amongst Muslims will emerge in due course and things will be sorted out sitting across the table. I believe a large chunk of the Muslim population will come forward and help in building the Ram temple in Ayodhya. I appeal to Muslims to take forward the spirit of reconciliation that this court verdict has provided. I am hopeful a larger consensus for amity and reconciliation will emerge. We should allow the process to go on without letting vested interests derail it. Muslims should take the hint in the judgment and move forward.

### **Offer Muslims land anywhere else: Kishore\*, Togadia\***

In the light of the verdict of the Lucknow Bench of the Allahabad High Court in the Ayodhya title suit, the Vishwa Hindu Parishad (VHP) has demanded that the Central Government hand over to it the entire 67 acre of acquired area so that a Ram temple can be built. Acharya Giriraj Kishore and Pravin Togadia, senior international vice-president and international general secretary respectively of the organisation, spoke to *Frontline* on the verdict. Excerpts:

**Q. Now that the High Court has ruled that the place where the Ram Lalla idol is kept is the birthplace of Ram, do you feel vindicated?**

**A.** The Allahabad High Court verdict is an affirmation of the faith of crores of Hindus the world over. The fact that all three judges unanimously decided on the issue of the birthplace of Lord Ram being at the spot where the idol is being worshipped by Hindus for years is an acknowledgement of the belief of Hindus and we welcome it and accept the verdict. Our stand has been vindicated that this is the birthplace

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\* Purnima S Tripathi interviews Acharya Giriraj Kishore and Pravin Togadia for *Frontline* Volume 27 Issue 21, 09-22 October 2010

of Lord Ram. This is further corroborated by the fact that the Sunni Central Waqf Board's claim over the title deed has been dismissed unanimously by the court.

**Q. But the court has also ordered that one-third of the disputed land be handed over to the waqf board.**

A. The Sunni Central Waqf Board's title claim has been rejected by the court, and since the court has ruled that the place where the idol is kept at present is the birthplace of Lord Ram, what meaning does the waqf board claims have? We want to build a grand Ram temple at the spot and demand that the Central government hand over the entire 67 acres of land to us for this purpose. We appeal to all, including the Muslim community, to come forward and help in building a grand Ram temple at the spot, in keeping with the spirit of the court ruling. Besides, the waqf board has also claimed that if it is proved this is the birthplace of Lord Ram it will give up its claim over the land. It should follow what it has said all along.

**Acharya Giriraj Kishore:** I appeal to the Muslim community to forget the past and work for the construction of a Ram temple in Ayodhya. This is a rare opportunity for them to pave the way for everlasting peace and amity between the two communities and they should avail themselves of this opportunity. Once they do this and give up their claim over the Kashi and Mathura temples, there would be everlasting peace and communal harmony.

**Q. But the court has found their claim valid for one-third part of the land.**

A. See, their title suit claim has been dismissed by the court, so they should be magnanimous enough to give up their claim over this land now and join hands with us in building a temple. This will be in the larger interest of all. We have made it clear in our resolutions before that we will not allow any mosque in or around the disputed area. We can offer Muslims land anywhere else but Ayodhya, and if they agree to our proposal we will help in making a grand mosque for them. Ayodhya is one of the most sacred places for millions of Hindus and they should respect this.

**Q. What if the Supreme Court upholds the High Court decision?**

**A.** We will see then. As of today, our position is clear. Besides, Muslims should understand that they have lost the title case on the issue of law; their claim has been rejected as it was found to be time barred. We are confident the Supreme Court will see the merit in this. It took the court 60 years to come to this conclusion. A lot of violence and bloodshed could have been avoided had the case been decided earlier. This was a very sensitive case and the court had to take cognisance of many aspects—thousands of witnesses to be heard, thousands of pieces of evidence to be examined. We are satisfied that finally justice has prevailed. It is a historic event that has the potential to change forever the political landscape of India. Once Muslims understand and accept the spirit of this verdict, Hindu-Muslim relations will change forever. Let bygones be bygones, let there be no acrimony and let there be peace for all time to come.

**Q. How do you intend to take your temple construction plan forward?**

**A.** That is for the sadhus and the sants to decide. This time they will lead the temple construction programme. We have no plans for the immediate future.

### **The Muddle Path\***

The verdict of the Lucknow bench of the Allahabad High Court on the title suits related to the disputed site in Ayodhya makes you wonder whether anything straight can ever emerge from the crooked timber of the majoritarian mind. The three parties involved in the suits the Nirmohi Akhara, the Sunni Central Board of Waqf and the Ram Lalla Virajman had expected, on wholly reasonable grounds, that the court would rule in favour of one or the other side without a trace of ambiguity. What the three judges decided instead was to trifurcate the land and hand it over to the litigants in equal parts.

Among the factors that led them to do so, the most intriguing by far is the cachet of legality that they have bestowed on belief and faith. Both, we had assumed, naively as it turns out, had to be kept outside the ambit of the court. Here, judges weigh evidence rooted in incontrovertible facts, examine the pertinence of reasoned arguments and proceed to deliver a judgement that conforms, in letter and spirit, with the laws prevalent in the land. But by their very nature, faith and belief have no

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\* Dileep Padgaonkar, *The Times of India*, 2 October 2010

factual basis. They are above reason. And if push comes to shove, they aren't answerable to norms of legality laid down by mere mortals.

This is the road that the three judges chose to tread. They looked upon Lord Ram not as a mythological figure who, given his exemplary life and character, dwells in the hearts of millions of Hindus, but as a historical character. This explains the court's willingness to identify the precise location of his place of birth. The exercise did not call for a shred of evidence. None was sought and none was forthcoming. It was undertaken simply because the faith and belief of Hindus decreed that the Lord was born under the central dome of the mosque that was razed to the ground.

Once faith and belief are factored into a resolution of a legal tangle, you embark, swiftly and surely, on the slippery slope of majoritarian conceit. Both can well come into play if a settlement is discussed outside the confines of a court. Attempts to this effect have indeed been made since 1992. Each one has failed. The reason, quite simply, is that when the Sangh Parivar asked for a compromise, it in fact wanted the Muslims to renounce their claims to the disputed area "out of respect for Hindu sentiments". That was no compromise solution at all. It was a summons to surrender.

For this very reason, the Muslims asserted time and again that they would like the case to be examined in a court of law and that they would abide by its verdict. This affirmation of trust in the judiciary is easily explained. They had every right to expect the court to focus on the title suits without taking into account considerations that were extraneous to the judicial process. The court treated Lord Ram as a 'juristic person'. In the eyes of the law, a deity or an idol is thus entitled to be placed at par with flesh-and-blood litigants. The sheer brazenness of this stand, which belittles the exalted stature of Hinduism's most revered divinity, makes you wince.

After this bit of 'creative' legal thinking, the other infirmities in the verdict appear to be no more than trifles. Take the issue of whether or not a mosque was built after demolishing a temple. From all accounts, the findings of the Archaeological Survey of India were incomplete

at best and, at worst, misleading. At any rate, experts are divided on the subject. But that did not persuade the judges to exercise a bit of circumspection.

But assume for a moment that Babar did order the destruction of a temple and the construction of a mosque in its place. How can you apply the laws of the 21st century to the depredations witnessed in the 16th century? And, more significant still, why should the sins committed by Babar visit his co-religionists today? In a country where, for example, Buddhists have been at the receiving end of Hindus, this can open a can of worms. This verdict therefore smacks of majoritarian arrogance which, one hopes, will be jettisoned root and branch by the Supreme Court.

The silver lining in all this is that the country has by and large heeded the appeal of political parties and religious leaders to remain calm after the verdict. With the exception of a few hotheads, who have again raised the spectre of Kashi and Mathura, their own reactions have indeed been muted. Does this augur well for an out-of-court settlement? Much would depend on the outcome of a criminal case related to the demolition of the mosque that is being heard in another court. Exemplary punishment for those who brought shame and infamy to India could go a long way in persuading the Muslims to part with the land that is now rightly theirs in the larger interests of the nation. They can then walk tall as citizens who put the future of our democratic and secular republic above their sense of hurt.

### **A verdict that legitimises the Masjid demolition\***

The absence of any condemnation of vandalism of the demolition of the Babri Masjid on 6 December 1992 is a conspicuous aspect of the Ayodhya verdict of the Allahabad High Court.

The Supreme Court in its judgment of 1994 said of the demolition, "Within a short time, the entire structure was demolished and razed to the ground. Indeed, it was an act of 'national shame.' What

\* T R Andhyarujina, *The Hindu*, 2010 Vol xlv no 38 7

was demolished was not merely an ancient structure, but the faith of the minorities in the sense of justice and fairplay of the majority. It shook their faith in the rule of law and constitutional processes. A 500-year-old structure which was defenceless and whose safety was a sacred trust in the hands of the State government was demolished.”

The White Paper issued by the government on the demolition said, “The demolition of the Ramjanmabhumi-Babri Masjid structure at Ayodhya on 6 December 1992 was a most reprehensible act. The perpetrators of this deed struck not only against a place of worship, but also at the principles of secularism, democracy and the rule of law enshrined in our Constitution. In a move as sudden as it was shameful, a few thousand people managed to outrage the sentiments of millions of Indians of all communities who have reacted to this incident with anguish and dismay.”

So great was the sense of outrage that the Prime Minister and the Central Government said on 7 December 1992 and 27 December 1992 that the mosque would be re-built.

The Ayodhya judgments of the Allahabad High Court make no note of the vandalism of 6 December 1992. On the other hand, they take the demolition as a *fait accompli*, as if the disputed 2.77 acre site was a vacant land.

After holding that the area beneath the central dome of the erstwhile Masjid must be allotted to Hindus because of their faith that Lord Ram’s place of birth was there, and the areas covered by the Ram Chabutara and Sita Rasoi should be allotted to the Nirmohi Akhara, the court has said that the remaining area of the disputed site should be divided, two-thirds to the two Hindu plaintiffs and one-third to the Muslim plaintiff by metes and bounds.

These judgments, therefore, legalise and legitimise the 1992 demolition, as the decree of the court proceeds on the basis that there is no Masjid on the disputed site today.

It is an elementary rule of justice in courts that when a party to a litigation takes the law into its own hands and alters the existing state of affairs to its advantage, (as the demolition in 1992 did in favour of

the Hindu plaintiffs), the court would first order the restitution of the pre-existing state of affairs.

If that is not possible, as in this present case, the court would not allow an act of lawlessness to benefit the party that indulged in it. The Allahabad High Court judgment ignores this elementary rule of justice. The test of the soundness of the court's verdict is this: assuming the correctness of the High Court's findings that the area beneath the central dome of the mosque was the birthplace of Lord Ram or that the Masjid was built over the ruins of a temple in 1528, if the Masjid had not been demolished and had remained on the site, would the court have ordered a division and partitioning of the disputed site in the manner it has directed? This could have been done only by the Masjid of 500 years being brought down to create a vacant site—which clearly would have been an impossible direction.

If that is not the case, can the court take advantage of the illegal act of demolition of the Masjid and order a division of the disputed site in the manner it has done?

The majority verdict of the High Court is well intentioned, meant to be a measure of compromise and national reconciliation. If it is accepted in that spirit by the Muslim community, it will resolve a burning communal problem of our nation. This is the consummation to be wished for. If this does not happen and the court's verdict has to be accepted, it will leave simmering resentment in the Muslim community, for it will see that as the court's condonation and legitimisation of a place of worship having been vandalised.

### **All Parties Must Act to Face the Situation\***

The government, the opposition and the public in general are rightly in panic awaiting the verdict on Babri Masjid by the Allahabad High Court—a situation brought about by the faltering non-secular stand by the governments concerned. The High Court is to give its verdict on the following points: (1) Was the place under Babri Masjid the birth-

\* Rajender Sachar, Tribuneindia.com, 29 September 2010

place of Lord Ram? (2) Was there a temple on the land on which Babri Masjid was built?

Now it is obvious to the meanest intelligence that it is impossible to prove that the birthplace of Lord Ram was under the Masjid—it may be a matter of faith, genuine or contrived or otherwise, but that is no proof, nor can it ever be put forward as a legal ground to take away the land from the mosque.

If the finding is that the masjid was not built on a temple, then the Muslims get the land back and will be free to use it in any way, including the building of the mosque.

In the alternative, it may be held that there was a temple on the land of Babri Masjid. But even with this finding the suit by the VHP/RSS has to be dismissed. Admittedly, Babri Masjid has been in existence for over 400 years till it was demolished by goons of the VHP/RSS in 1992. Legally speaking, the Sangh Parivar would have no right even if a temple had been demolished to build Babri Masjid.

I say this in view of the precedent of the case of Masjid Shahid Ganj in Lahore decided by the Privy Council in 1940. In that case there was admittedly a mosque existing since 1722 AD but by 1762, the building came under Sikh rule and was used as a gurdwara. It was only in 1935 that a suit was filed claiming the building was a mosque and should be returned to the Muslims.

The Privy Council, while observing that “their Lordship have every sympathy with a religious sentiment which would ascribe sanctity and inviolability to a place of worship, they cannot under the Limitation Act accept the contentions that such a building cannot be possessed adversely”, went on to hold, “The property now in question having been possessed by Sikhs adversely to the waqf and to all interests there under for more than 12 years, the right of the mutawali (caretaker) to possession for the purposes of the waqf came to an end under the Limitation Act”. On the same parity of reasoning even if a temple existed prior to the building of the masjid 400 years ago, the suit by the VHP etc has to fail.

There is another reason why in such a situation, the suit will fail

because in common law, even a rightful heir, if he kills his ancestor, forfeits his right of inheritance. In the masjid case too there was a “murder most foul” and hence the murderer cannot be allowed to take the benefit of his own dastardly deeds, whatever the legal position maybe.

It is true that sometimes some Muslim groups in a spirit of large-heartedness and as a measure of mutual accommodation, suggest that if it was found that the masjid was built on the site of a temple, they would not like to now build a mosque on the said site because the Koran forbids the Muslims to build a mosque by demolishing any other religious place. But even then if the Muslims choose not to build a masjid on this site, the ownership and use of the land remains with them. The Hindus cannot under any circumstances lay a claim to this site which was under Babri Masjid.

Some well-intentioned persons come out with an apparently neutral suggestion of building a multi-religious complex on the site. To me this would be a surrender to the rabid Hindu communal sentiment. Whatever explanation you may give, a Muslim then would feel a less equal citizen if even after he has won, he is asked to share this site with the goons who destroyed the holy mosque. This would be a defeat of secularism and against our Constitution, which mandates that all citizens—Hindus, Muslims and others—have equal rights and are equal before law.

A multi-religious complex or a multi-culture centre or a hospital can obviously be built by the joint free will efforts of both Hindus and Muslims. But such a complex, if it is to be built necessarily, must be on the land away and outside the masjid complex, and that too only if the Muslims give their consent—obviously as the vacant land belongs to the Muslims. But under all circumstances, the site under Babri Masjid must remain in the exclusive possession of the Muslims, who should be free to use it in any way the community decides.

I feel that the government should start doing an exercise of consultation and preparation on these lines—to await helplessly trying to anticipate what the verdict would be is like a pigeon who on seeing a cat closes its eyes with the delusion that the cat would go away—the result is obvious.

Equally, I feel that the leaders of all communities, political parties and social groups should start planning to meet the situation because the matter requires the involvement of people at the grassroots level and the matter does not brook any delay.

The legal position is clear. It is only the weakness of political will that is responsible for the Ayodhya imbroglio to continue as one of the bitterest disputes within the country. By keeping the Ayodhya issue alive, the country has been kept away from addressing its most urgent task—how to meet the challenge of the growing pauperisation of the masses. And that includes both Hindus and Muslims.

### **Triumph of Faith or Constitutional Legality?\***

The much awaited judgment of Lucknow Bench of Allahabad High Court in the title suit filed by Sunni Waqf Board, Nirmohi Akhara and others was at last delivered and has been welcomed by some and criticized by others, mainly by litigant parties. Those who want to see the controversy end for once and all are arguing that the judgment will help bring about resolution of the dispute among all three parties (Ram Lalla idol has been treated by the judgment as a legal entity). Now Hindus can build a temple and Muslims a mosque, if they so desire and India can move on.

After all the controversy has to end somewhere and India should move on. Had the judgment achieved that, it would have had some merit. But both the litigants are far from satisfied and want to challenge it in the Supreme Court. The judgment has utterly failed to bring about any reconciliation. And apart from this the judgment has set a dangerous precedent.

While peace and reconciliation is very important if it is achieved at the cost of Constitutional democracy and rule of law, it can do more harm than achieve such objective, if it succeeds. The judgment is based on faith, not on law. The two judges, without any historical proof and law of the land straightway invoked the faith of Hindus that Ram was

\* Asghar Ali Engineer, *Secular Perspective*, 16-31 October 2010

born at that place and that a 12th century temple existed there (while admitting that they do not know anything about history and archaeology) and given land to Ram Lalla on one hand, and Nirmohi Akhara on the other and as if as a concession to Sunni Muslim Wakf Board also.

Many legal experts, therefore, apart from the litigants, have strongly criticized the judgment and feel now only the Supreme Court may examine the whole dispute strictly from legal and constitutional viewpoint and deliver the final judgment though it may take some time. Justice Khan, the third judge, though felt there is no proof of any temple being there yet felt that in the interest of peace and reconciliation the land may be divided among three litigants.

Thus all three judges have invoked values of peace and reconciliation rather than constitutional values of democratic India. Law is and must be indifferent to the faith of litigants and even of judges and the judgment, in a democratic country like India which has maintained its independence of judiciary and constitutional values for last sixty years, must be based only on law without any compromise.

It is for the first time that High Court judges have invoked faith disregarding historical facts and legal values and such invocation of faith can prove injurious to rule of law. It is not Court's concern whether reconciliation takes place or not, it has to function strictly accordingly to law. It is different thing if it appeals to the litigants to find a solution through negotiations rather than waste their time and resources in fighting in the court and it is for litigants to decide whether to accept the court's appeal or not. If they do not, the judges have to consider law as supreme and deliver their judgment.

Those who are celebrating the judgment today as victory of peace and an end to a long standing dispute, are either unaware of long term consequences of such a judgment or do not care for our constitutional democracy. Whatever their reason for celebration, either way it is setting a dangerous trend in court of law. Tomorrow other judges motivated by their faith may use this judgment as a precedent and deliver other judgments invoking faith. One judgment often becomes a precedent for subsequent judgments.

Thus, stretching the argument one can say as in a democracy after all numbers count and so faith of the majority community will play greater role than faith of the minority community and the court of law will thus become majoritarian in its attitude and all the legal values and protection of minorities and their faith in the constitution may be ultimately subverted. This judgment must be seen in this light if we care for majesty of law and our Constitution. While faith is very important for individuals and communities, the constitution is of seminal importance for the country and the nation. India is a country of great diversity and multiple faiths and the Constitution guarantees freedom of faith and conscience for all, law is as important for the nation as faith to a community and the Allahabad High court judgment must be seen in this perspective.

Even Hinduism is not a homogenous religion. Today among Hindus are counted, among others, Dravidians of South also. But Dravidian traditions are far different from Aryan traditions. If one goes by Karunanidhis statement, he has complained of Aryan deities being imposed on Dravidian ones. Thus even invoking faith of Hindus in the Allahabad High Court judgment is problematic. Apart from secular Hindus having faith in constitutional values, other Hindus having different culture and linguistic roots also may not subscribe to the same faith. Also such tendency of invoking faith may generate pressure on minorities in general, and certain religious minorities in particular, to give in to majoritarian values.

## II

However, having said all this it does not mean that such disputes should not be solved through dialogue, negotiations and mutual agreements. No one will be more happy than myself if the Ayodhya dispute is resolved through dialogue and in the spirit of give and take. It is indeed a great initiative on the part of Shri Hashim Ansari, one of the main litigants who has been fighting this case since early sixties to meet Hanumangarhi temple's main Pujari Shri Gyan Das after the judgment to intervene with Nirmohi Akhara and put an end to the whole controversy through negotiation.

India is a great democratic country and such disputes about the past either must not be invoked at all, as future is much more important than the past, or having invoked must resolve it through mutual understanding so that both the sides should not feel like a loser. It is very dangerous that politicians should raise questions of history and use it for their political objectives. The BJP has done precisely that.

It is also regrettable that those who committed crime of demolishing the mosque did something which was both unlawful, unconstitutional and undemocratic and also against tenets of Hindu faith, and yet they are celebrating the victory of faith over law. This is even more dangerous. The culprits of demolition have not been yet punished which is another violation of the Indian Constitution. The least one can expect is to punish whoever the guilty is or are.

Here in such cases civil society must play a vibrant role; our intellectuals, historians, religious leaders litterateurs, peace activists and all those who stand for democratic and constitutional values must come forward and put pressure on both sides to carry on a meaningful dialogue to find a solution outside four walls of legal chambers to resolve this controversy.

Earlier also Shankaracharya of Kanchi Kamakoti Peetham had taken an initiative along with Muslim personal Law Board in early 2000 to resolve the controversy but VHP and others gheraoed him and stopped him from doing so. This time Shankaracharya of Jyotish Peeth and Dwarka Peeth Swami Swaroopanand Saraswati has once again indicated his intention to do so and this should be heartily welcome and members of Muslim Personal Law Board should join hands with him.

It is also heartening and we must duely praise the efforts of people of India to reject street violence decisively and stand for peace. Our common people have truly stood by peace and very firmly. They have displayed much more wisdom than our politicians whose lust for power never ends.

Along with this, we should also recognize the fact that Muslims of India have shown great initiative for peace and practically every Imam in every mosque appealed for peace consequently for two Fridays preceding

the judgment, and told Muslims to accept the judgment whether it is in favour or against. Contrast this with mid-eighties and end of eighties when Muslims were greatly agitated for Babri Mosque.

Our democracy has indeed made them realize that it is in democracy and secular values that lies their future and they must assert themselves for peace and prosperity of people of India together. Confrontation will bring only violence and destruction. All Hindus and Muslims and others have shown great solidarity this time to maintain peace marginalizing even extremists who used to issue statements in very shrill tone. They are issuing statements in much more muted tones. It is the people of India who have made them behave. I, therefore feel that civil society must assert itself and give direction to our political leaders on how to behave.

If such an initiative could be taken before the highest court's doors are knocked it will be much better. Only peace is our future and the civil society alone which can ensure this in a democracy.

Centre for Study of Society and Secularism, Mumbai. This dispute over a mosque is an argument about India. Allowing Hindu beliefs to determine a modern legal claim undermines the ground on which the Indian republic was built.

### **The Dispute over Mosque is an Argument about India\***

Why should a high-court judgment about the ownership of the site of a provincial Indian mosque razed 18 years ago resonate across India? Because more hinges upon the just resolution of the Babri Masjid dispute than the fate of a mosque. The real issue in dispute is not the site on which the mosque once stood but the constitutional ground on which the Indian republic is built. This is an argument about India.

In December 1992, the mosque, which Hindus believed had been built on the birthplace of their deity Ram, was torn down in a single day by a crowd of Hindu activists. The demolition was the violent climax of a pan-Indian movement designed to assert the political supremacy

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\* Mukul Kesavan, *The Guardian*, Tuesday 12 October 2010

of the country's religious majority. Nearly two decades later, the court judgment, by giving two-thirds of the mosque's site to Hindu litigants, seems to vindicate this majoritarian claim. There are three big problems with the Allahabad High Court's judgment. First, it recognises a prior Hindu claim to the site of a medieval mosque by relying on a report submitted by the Archaeological Survey of India. Citing the ASI's finding that its excavations had uncovered the remains of an earlier Hindu structure, the judges allow a sense of historical injury felt by some Hindus to become the basis of a modern legal claim.

Second, the judgment concedes that the religious beliefs of a rhetorically invoked Hindu majority, regardless of their historical truth, can be determining in a legal dispute. The judges rule that because Hindus believe that the birth place of Ram (epic hero and god) lay under the central dome of the demolished mosque, it is good in law to give that part of the mosque's site to the Hindu litigants. All three judges acknowledge that Hindu idols were furtively installed under the central dome in 1949, which is when Hindu worship first began inside the mosque—but this illegality and the subsequent criminal razing of the mosque count for nothing in their judgment. This is the third problem with the verdict. While the alleged medieval destruction of an ancient Hindu temple is central to its reasoning, the mosque demolition less than 20 years ago isn't even mentioned. The spin put on this omission by those who welcomed the judgment was that the mosque's demolition was the subject of a separate criminal suit and had no bearing on the civil case. It has been 18 years since the demolition and no one has been punished for it, which makes this diversionary gesture at the criminal suit a fairly shrivelled fig leaf.

Besides, as TR Andhyarujina, a former solicitor general of India, wrote in his critique of the judgment, "When a party to a litigation takes the law into its own hands and alters the existing state of affairs to its advantage (as the demolition in 1992 did in favour of the Hindu plaintiffs) ... the court would not allow an act of lawlessness to benefit the party that indulged in it. This elementary rule of justice the Allahabad high-court judgment ignores."

The Sunni Waqf board, which filed the title suit denied by the high court, will appeal to the Supreme Court. Meanwhile, in the media, there is enormous pressure on Muslims to "settle", to accept the judgment as fair. The Muslim litigants are already being cast as spoilers. When bearded Waqf board spokesmen are interviewed on television by slick young anchors in suits who keep asking them if they're prepared to "move on", a convenient tableau of fundamentalist intransigence is born.

One of the more poignant moments in the post-verdict debate was the sight of that lion of Hindi cinema, Javed Akhtar, scriptwriter and lyricist, in a television studio in his capacity as a secular Muslim. He said, deadpan, that Muslims couldn't be secular. He was suggesting, ironically, that Indian Muslims could only be militant or moderate, bad or good. Being secular was the privilege of chivalric Hindus; Muslims, by implication, were limited to the roles forced upon them by their Hindu interlocutors. Some pundits called on the Congress-led ruling coalition to broker an out-of-court settlement. Congress governments have presided over every Hindu encroachment on the mosque, from the smuggling in of the idols in 1949, to the opening of the gates of the mosque to regular Hindu worship in 1985, to its demolition in 1992. After the court judgment, the Congress party began sounding out Muslims about a compromise that would consist of the Waqf board magnanimously giving up its claim to the one-third of the site the court had given it, to effect a "reconciliation". The party is an unlikely honest broker because it wants to square a circle: it wants the credit for helping build the Ram temple without losing the Muslim vote.

The Supreme Court is the likely place where this matter will be resolved. Indians who take the secular guarantees of the constitution seriously must hope it reverses the high court's judgment. If the Supreme Court were to uphold the high court's verdict, India will look the same the morning after, but the common sense of the republic will have shifted. It will begin to seem reasonable to Indians that those counted in the majority have a right to have their sensibilities respected, to have their beliefs deferred to by others. Invisibly, we shall have become some other country.

## Till Judgement Day Comes Again\*

Much of the commentary on the Ayodhya ruling has made a connection between India's calm response to the verdict with the something-for-everybody judgement of 30 September. In reality, peace prevailed largely due to the fact that Ayodhya does not touch a chord in the manner that it did when the destruction of the Babri masjid took place on 6 December 1992. But that shouldn't make us gloss over the flawed nature of the verdict. One anomaly has been widely noted that is the court's reliance on the beliefs and faith of some Hindus regarding the birthplace of Lord Ram to decide the three-way division of the disputed property. The other was giving a stamp of legitimacy to the appearance of idols in 1949 smuggled in, by all accounts, by Hindu activists in what was for over four centuries a functioning mosque.

The fundamental problem with the verdict, however, was the court taking on issues that fell well outside its jurisdiction. This was noted in this newspaper and elsewhere as early as 1990, a year after four suits relating to the disputed site were clubbed and transferred to a special bench of the Allahabad high court. Then, TOI had reported, "Several of the 43 issues framed by the court on 25 May pertain neither to law nor any verifiable fact. Rather, these issues fall in the grey areas of history, mythology and religion." It is pertinent that three years later, the Supreme Court had wisely rejected the presidential reference made by the Narasimha Rao government on whether a temple existed on the site of the Babri masjid. The three-judge high court bench was, however, unafraid to walk into this minefield. It attempted to answer questions such as whether the disputed site was the birthplace of Ram or if the Babri masjid was built in 1528 by destroying a temple, which it was simply not equipped to do. Unsurprisingly, for all the judges' efforts at going through masses of evidence and the thousands of pages they devote to it, the result is deeply problematic.

One of the judges who gave the majority verdict, Justice Sudhir Agarwal, wrote that finding "positive evidence" for Ram's birthplace in

the disputed site is “not only a futile attempt but is against all the canons of the principles of law”. But he still went ahead and determined that the spot where the Babri masjid stood was precisely where Ram was born, a leap that is difficult to justify. Justice S. U. Khan took an “informed guess” that this was so. Justice Dharam Veer Sharma was, however, absolutely certain saying that the “whole world knows that Lord Ram was born in Ayodhya where the temple Ram Janama Bhumi stands”.

The partition plan trotted out by the court in what was a title suit is an odd one. Constitutional lawyer Rajeev Dhavan has pointed out that the easiest way out would have been using judicial precedent to give title status to the Muslims, saying it was too late to reopen the controversy and declaring that the Muslims had not lost possession of the site between 1949 and 1961 when the first civil suit was filed on their behalf. Instead, the court resorted to a partition plan which was founded on shaky legal reasoning making the real winner Ram's deity, on whose behalf a suit was filed as late as 1989 by his “next friend” Deoki Nandan Agarwal, a Vishwa Hindu Parishad leader and, ironically, a retired Allahabad high court judge.

But one shouldn't probably be too harsh on the high court. Many Supreme Court verdicts have entered areas it should never have ventured into, especially in religion-related cases. The two instances that immediately come to mind are the Hindutva judgement and the Shah Bano case. In 1996, deciding on the question of whether an appeal to Hindutva constitutes a violation of the Representation of the People Act, the Court equated Hindutva with Hinduism and described both as a “way of life”. This idea, in turn, was borrowed from a 1966 Supreme Court judgement which, adjudicating on the claims of Satsangis to be a separate religious sect, went into a detailed exposition of why Hinduism should be regarded as a “way of life”. What was an idea expounded by Sarvepalli Radhakrishnan became sanctified by the court only to be appropriated by the Hindu nationalists to justify their agenda.

Similarly, in the Shah Bano case, it wasn't the maintenance granted to a divorced Muslim woman that was controversial. Earlier court rulings had already done so. It was only when the court went out of its way to

regret that a uniform civil code had remained a “dead letter” and said it inevitably had to play the “role of the reformer” that the case became such a hot potato. In the same way, parts of the Allahabad High Court ruling will be used as political fodder by the Hindu nationalists. The only saving grace is that today’s India might not be as receptive to that message. Besides, with the stage set for an appeal to the Supreme Court we haven’t heard the last word on Ayodhya.

### **No Triumphalism\***

Variously described as an example of “judicial statesmanship” (Soli Sorabjee) and “an astonishing, one-sided judgement” (Rajeev Dhawan), the Allahabad High Court’s Ayodhya verdict is likely to be one of the most furiously debated judicial conclusions in the history of Modern India. It appears to have evoked both hope and disquiet, depending, perhaps, on one’s expectations, politics and ideology. Interestingly, the one adjective used uniformly across the legal divide to capture the essential character of the verdict was that it was “panchayat-styled justice.” But polemics aside, as we wade through the thousands of pages that make up the three distinct perspectives of the court, the verdict must be assessed by the benchmark set by one of the judges himself. Does it, as Justice S U Khan asks movingly in his prelude, succeed in clearing the “innumerable landmines” from the 1,500 square yards where “angels fear to tread”?

A panchayat, by definition, seeks to keep peace in the village by brokering a compromise between maximalist positions. Understood in this manner, the judgement seems to aim at being politically astute rather than legally brilliant. And indeed many questions are being raised about whether a dangerous precedent has been set by the specificity with which matters of faith seem to have become points of law. Could the majority judgement not have reached the same conclusion without, for instance, being evidentiary in approach?

In other words, could the decision to divide the property between Hindus and Muslims have been based more on deference to religious

\* Barkha Dutt, *Hindustan Times*, 2 October 2010

beliefs and sensitivities on both sides than on any stated empiricisms? These are issues that will be deconstructed by legal experts in the weeks to come. For the rest of us, the real question is the one posed by the judges themselves i.e., can the verdict provide an opportunity for national healing? The answer to that question lies in a series of things that must not happen in the aftermath of a verdict that in any case will get locked by the Supreme Court. We also have to appreciate that the judges were left to play the role of sarpanch, because the men and women who should have—our politicians—failed to initiate a process for any real reconciliation. And in our understanding of where we go from here, we must take our cue from how the country responded in the immediate aftermath of the verdict—dignified, sober, restrained, and mostly, eager to move on. To build on this national mood, here are some essential prerequisites.

Petty triumphalism and gloating by those who see themselves as “victors” after the judgement is not just a loathsome response but one that is counter-intuitive to public expectation. The first discordant and ugly note was struck by the individual lawyers for several Hindu groups who violated every tenet of legal decency by rushing out of court into the glare of television cameras, flashing the victory sign, proceeding to oversimplify a complex judgement into dangerous generalisations. The court should not have permitted this to be the first dissemination of the verdict in the public domain. It smacked of the worst sort of small mindedness.

And it is this lack of grace that we must not allow our politicians in the days to come.

So far, the BJP and even the RSS have been essentially restrained and responsible in emphasising that the verdict must not be posited in terms of victory and defeat. But, should the party have been so quick in using the verdict to talk about a “grand mandir” at Ayodhya? If, as the party argued, the Allahabad High Court had paved the way for national reconciliation, then could the BJP not have shown a little more magnanimity of response? For instance, L K Advani, whilst talking about a Ram Mandir, could have also been more specific in welcoming the building of an adjacent mosque. Both Justice Khan and Justice Agarwal have underlined the “very unique” historic tradition of Hindus and

Muslims offering prayers alongside at the site before the 1857 mutiny. The BJP could have focused more than they did on this syncretic history of India's religious edifice.

Equally, if any Ram Mandir is to be built in a spirit of "reconciliation" then the truth of the demolition of 6 December 1992, must be addressed first. Yes, the thuggish and shameful demolition was not legally connected to the four title suits being determined by the Allahabad High Court. But since the judges showed enough innovation in their decision to divide the property between the communities, an observation—at the very least—about the demolition would have added more moral fibre to their good intentions. The Congress, whose own history is far from above-board when it comes to Ayodhya, has also been strangely wishy-washy in taking specific action against the perpetrators of the demolition. It is important to underscore that this verdict—with its varied perspectives on what the nature of the structure was—does not change the fact that there needs to be accountability for the appalling breakdown of the law in 1992. We must understand that the Babri Masjid per se was not as important to the Indian Muslim, as the demolition made it.

And finally, while justice for 1992 remains a live issue, Muslim leaders too must allow their community's younger generation to embrace new priorities and dreams and not keep them locked into narratives of the past. Their rhetoric too needs to be responsible and non-inflammatory in these sensitive times. In short, grace and generosity of response is what we expect from all the stakeholders. That, and a reminder that in Ayodhya, the flowersellers outside the Hindu temples are all Muslims, as are the men who craft the Hindu icons that the devout worship. That is the India we know and love. That is the India we must preserve.

### **A Matter of Faith?**

"India has moved on," said Union Home Minister P Chidambaram, reassuring the country hours before the Ayodhya verdict was delivered.

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\* Varghese George, *Hindustan Times*, 3 October 2010

His assurance, born out of anxiety, had reasons. All major riots since 1987, including Gujarat 2002, have had Ayodhya links. Three days after the verdict that upheld the Hindu belief that Lord Ram was born at the mosque site and divided the disputed land into three, India is calm and the politics around it muted.

So has India moved on? "It's too early to say. The verdict is sinking in and the political fallout of it will take a while to play out," says Zoya Hassan, professor of political science at JNU.

Though Ayodhya politics stirred the entire country, its main soil was the north and west of India. The BJP, Congress, Mulayam Singh Yadav-led Samajwadi Party (SP) in UP and Lalu Prasad-led Rashtriya Janata Dal (RJD) in Bihar have been the key players. Communal and caste polarisation—triggered by the implementation of the Mandal Commission report—helped the BJP, SP and RJD. The upper castes went with the BJP; the backwards and the Muslims with the SP and RJD. The Congress lost its base to these emerging parties, a trend it managed to offset after the Gujarat riots. In the past eight years, the BJP, SP and RJD have been on the downslide while the Congress is on the ascendant. Does the Ayodhya verdict change this trend?

#### **BJP: Keeping the Faith**

"The verdict has enthused the party workers while holding out the possibility of a resolution," says BJP spokesperson Ravishankar Prasad. Another senior BJP functionary who did not want to be named said, "We have been promising the temple for so long. Now there is a sense among our voters that we can deliver too." The BJP brass is hopeful that the vindication of its position on Ram's birth in a court of law will energise its cadre. The party is also conscious of the changed demography of India and is calibrating its stance on the issue. "We cannot be screaming this time," a leader admitted. "BJP politics has traditionally been based on victimhood. This time they are the winners and the political potency of it is limited," says Hassan.

#### **Congress: Treading the middle path**

The judgment gave enormous relief to the Congress, which dreaded a "winner takes all" verdict. "There is no winner, no loser," said Janardan

Dwivedi, Congress spokesperson. But the disquiet among the Muslims is bad news for the party. Its revival strategy in UP and Bihar has been primarily based on winning back the Muslims. "The Congress may not have anything to do with the verdict, but perceptions are not based on facts. The demolition of the Masjid happened while the Congress was in power, and now the vindication of the Sangh Parivar," a party leader said. The party is likely to accelerate the implementation of the Sachar Committee recommendations on Muslims' employment in government jobs.

### SP-RJD: Looking for Muslim Insecurity

Mulayam Singh Yadav tried to gauge the mood of the Muslims, stating that the community felt cheated. Lalu Prasad, facing an election currently, has remained silent but can't hide his glee, says an RJD leader. "He is convinced that the Muslim flow to the Congress has been reversed," he said. Social scientist Shaibal Gupta has a different take on the matter. "An earlier political alliance cannot necessarily be revived," he says.

Political mobilisation around any issue is a two-way process—a receptive public and a proactive leadership. For instance, the VHP tried in vain to build a campaign on Ayodhya, which took off only after the BJP pledged its muscle and money power for the cause. The Indian public, sold to TV serials Ramayan and Mahabharat, found a resonance. Currently, the BJP, RJD and SP are not sure of the public mood and hence undecided on their course of action. "The Bihar elections will give the first indication of the political fallout of the verdict," says Hassan.

### Young, Muslim and reflecting on Ayodhya\*

Travelling in Uttar Pradesh ahead of the 30 September Allahabad High Court verdict in the Ayodhya title suits, I was struck by the uniformity of Muslim opinion. Older Muslims said they wanted the verdict delivered quickly and whichever way, because that would bring to closure a wracking issue that had destabilised their lives and set them back by many valuable years.

\* Vidya Subrahmaniam, *The Hindu*, 8 October 2010

The educated post-technology generation, innocently young during the benumbing years of the Ram Mandir movement, seemed disconnected from the issue. Not that they were unaware of the pain and insecurities of that time. Young or old, the heartland Muslim is a political animal, always well-informed and sharply intuitive. Yet conversations revealed an impatience to leave behind the past and embrace the future, however uncertain. There were complaints about biases, about being shut out of opportunities, about a sense of alienation. Yet even by these yardsticks, the world ahead was better for the young than the violence and darkness of the past. Their parents would know: All that mattered to the community in the decade after 6 December 1992 was their personal safety. Mulayam Singh in UP and Lalu Prasad in Bihar became saviours not because they delivered jobs but simply because they pledged to protect Muslim lives. A constant refrain heard in those troubled times was: "Hum hi nahin to aur kuch ka kya matlab?" (If we are not alive what use is anything else?) Who would want a return to that blighted past?

The "we-have-moved-on" buzz heard in U P became a roar in Delhi. It was everywhere. Television channels, hardwired to sensationalise the tiniest scrap of news, reverently mouthed the lines. Hindus said it. Muslims said it. Most of all, political parties, never known not to exploit an opportunity, said it. Verdict over, a fantastic, incredible quiet followed. There was not one incident reported from anywhere—not from Ayodhya, not from the rest of UP, not from any of the known trouble spots, not from anywhere in India. The maturity of the average Indian was on spectacular display. For once, opinion-makers had got the mood right: India had indeed moved on. Equally heartening, Indians had proved that communal violence is never spontaneous, it is always politically engineered.

Unfortunately, the joy of this discovery was diminished by a disturbing realisation: The verdict itself was not in tune with the aspirations of a modern, democratic, young nation. The first dissenting notes emanated from the condemned world of "pseudo-secularists." The three-way division of land, ordered by the judges, was based not

on hard, irrefutable evidence but on the claimed faith and belief of a claimed Hindu majority. Did India's Hindus, all 80 million of them, believe that Lord Ram was born at the same, precise spot where the mosque's central dome once stood? The verdict implied so, and handed that portion of the mosque to the Lord himself, deeming his rights to be overriding because he was a "perpetual minor." Was this the "majesty of law" that all sides respectfully invoked before the verdict, that Muslims in particular emphasised over and over?

Muslim organisations began to voice their disappointment. The Sunni Central Wakf Board, the main litigant on behalf of Muslims, correctly announced its decision to move the Supreme Court. But there were also the malcontents. The Shahi Imam of the Jama Masjid used the Friday prayers to deliver a fiery, rabble-rousing speech. Mr Mulyam Singh began stoking Muslim fears. There was no mistaking the opportunism in these actions.

It was time, then, for some unbiased, untutored Muslim opinion. I decided to reconnect with the Muslim respondents I had met in U.P. I also decided to tap my circle of Muslim friends for young, educated contacts. The list included, among many others, the teenaged Shafat from Balrampur, Shamshad Ahmad from Barabanki, Ehsanbhai from Ayodhya, Aftab Alam, a teacher from Delhi University, Arif Ali, an M Phil student of Japanese studies at Jawaharlal Nehru University, Shamshad Khan, a researcher at the Institute of Defence Studies and Analysis, and Zafar Ahmad, a software consultant with a multi-national company.

They spoke calmly but clearly, a small minority with a sense of resignation but almost all others feeling pained that 21st century India could substitute reason with faith. There were no raised voices, no uncontrolled flashes of anger, no talk of invading the streets or starting an agitation. Mr Shamshad Khan was "deeply disappointed" with the "extra-judicial" verdict but felt Muslims had other far more important matters to focus on: "Are we going to be held hostage to this issue forever?"

In truth, nobody wanted to be dragged down yet again by the Mandir-Masjid dispute. Without exception, everybody I spoke to said "never again; not down that path." However, most people added

a caveat: This did not imply unreserved acceptance of the verdict. I reminded them of the Muslim promise that the community would honour the verdict, no matter how it went. Laughed Mr. Aftab Alam, "How do we welcome a judgment that talks of theology in the 21st century? I would have felt the same way if a standing, living temple in independent India had been demolished and its demolition justified in the name of Islamic faith."

As Mr Alam and others saw it, there was no contradiction between wanting to move on and feeling dismayed by the judgment. Besides, how could India itself move on when the justice it offered went deep into the unknown past? Mr Zafar Ahmad summed it up beautifully, "As a Muslim I may not question this judgment. But as an Indian I do because ultimately this issue is about Constitutional guarantees, about the preamble, about how modern India views itself. What precedents are we setting at a time we are projecting ourselves as an emerging superpower moving into the era of science, technology and reason? Are we now going to start digging underneath each time an issue of faith is raised?"

Another interesting point emerged from the discussions: The same verdict might have been acceptable to Muslims had the judges used secular reasoning to divide the property between Hindus and Muslims. A sagacious judgment would have been for the judges to dismiss the Muslim suit for being time-barred though accepting that the facts in the case were clear, well established and in favour of Muslims. A division on the grounds of joint worship could have followed thereafter. Instead, the court sanctified the 1949 political manoeuvre of physically moving the idols into position under the central dome; that crude, blatant act, watched over by a 40-50-strong mob, had become the faith of all Hindus.

Though perhaps not wanting it that way, older Muslims had found their identities entwined with the fate and survival of the Babri Masjid. In 1990, with Lal Krishna Advani astride his Ram rath, *mandir wahin banayenge* (we will build the temple only there) had escalated into a war cry. Every Hindutva milestone crossed thereafter heightened the Muslim sense of isolation. The courts spoke reassuringly of maintaining the status quo. But the status quo had always altered—and always

in favour of Hindus. In 1949, the installation of the idols became the status quo. In 1986, the opening of the locks became the status quo. In 1989, the shilanyas ceremony became the status quo. And finally, in 1992, the demolition of the mosque followed by the erection of the temple became the eternal status quo. That year, the Supreme Court severely censured the destroyers of the mosque. But in 2010, a lower court would stamp its imprimatur on that very status quo—by accepting that Ram Lalla was born under Babri Masjid's central dome. The BJP's 1994 white paper on Ayodhya was almost prescient when it noted that the same courts that for years could not help Hindus came around once "the structure was physically occupied."

Today's young Muslims are very different. They do not identify with the mosque. It is immaterial to them whether a mandir or a masjid comes up on the spot. But as some of them told *The Hindu*, they are Indians first and committed to the values held sacred by the Constitution. These values, including protection of minority rights, cannot but come into question when justice, delivered in a court of law, tilts visibly towards the majority. Even without the shadow of the Babri Masjid, life is not easy for Muslim boys and girls, a fact brought out most graphically by the Rajinder Sachar Committee report on the status of Muslims.

The report situated the community at a level below the Hindu OBCs but above Dalits. It highlighted lack of access to education, bank credit and employment. It said Muslims bore the double cross of terrorism and appeasement. For the Muslim sense of injustice not to grow, for young Muslims not to feel the way their parents' generation did, justice, in every manner of speaking, must be delivered to them, and must be seen to be delivered to them.

### **My Own Sort of Hindu\***

"What is wrong with faith?" an angry gent asked me recently. He was not a knickerwallah but a soft-spoken air force officer. He argued with some passion that this magazine's criticism of the Allahabad High Court

\* Vinod Mehta, *Outlook*, 25 October 2010

judgement amounted to a rejection of faith. The officer explained he respected every community's right to their belief; therefore, those other communities should respect the Hindu's right to belief. He then asked me if I was a practising Hindu. I dodged the question.

I may not be a practising Hindu in the formal sense but I am not an atheist or even an agnostic. If anything, I am a vague sort of Hindu, the kind who prays at temples, mosques, churches and gurudwaras. I reckon if God exists, and it turns out He is not a Hindu, why take a chance. Spread your bets. Before someone stole my M.S. Subbulakshmi CD, I used to listen to her bhajans. The calm and peace they brought is indescribable. Moreover, if there is any religion I admire, it is Hinduism—but of the pseudo-secular variety. In other words, a Hinduism which celebrates tolerance and favours inclusiveness. Indian secularism, which has stood the test of time and which is acclaimed even by our Pakistani brothers, is a consequence of our great Hindu civilisation. You couldn't have one without the other.

But faith and religion have been wisely excluded from our Constitution, a document which is enshrined to protect all faiths equally. Whether the Ayodhya verdict leads to an out-of-court settlement is not the issue. The Muslims might agree to settle because the poison of the temple-vs-mosque dispute has plagued their lives. A couple of years ago, the Kondhs of Niyamgiri asked the Supreme Court to deny Vedanta permission to mine bauxite on their mountain since their God is virajman there. Do you have any proof, asked the court. No, said the tribals, it is our belief He lives there. The tribals lost the case because the highest court in the land refused to take cognisance of just belief.

### **Forgetting facts\***

The judgment apparently has not taken into account the evidence presented by leading historians on the disputed site.

The "compromise" judgment of the Allahabad High Court, for all its merits and attempts to achieve communal amity, is perceived as

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\* T K Rajalakshmi, *Frontline*, Volume 27 Issue 21, 09-22 October 2010

a setback for the basic tenets of historical inquiry and precision. Social scientists of all hues have reacted with dismay to the dominance of faith and belief over scientific fact and historicity.

While a section of the political class and the intelligentsia genuinely believes that it is time to move on and let the higher judiciary take up the matter if need be, historians and students of history wonder what happened to all the evidence painstakingly collected in the national interest by leading historians and archaeologists of the country. One of them, the archaeologist Suraj Bhan, who is no more, had noted the strain the dispute had created, before the demolition, and attempted, purely voluntarily, to set the record straight, not only to maintain communal amity but to protect academic integrity.

In 1991, two significant reports, one in March and the other in May, were written with the sole objective of presenting to the nation information relating to the Ram Janmabhoomi-Babri Masjid issue. The May report, titled "Ramjanambhoomi-Babri Masjid issue: A preliminary study of the archaeological evidence", was by Suraj Bhan, who was Professor of Archaeology in the Department of Ancient Indian History, Culture and Archaeology at Kurukshetra University in Haryana. This was an interim report, which was submitted to the Indian Council of Historical Research (ICHR). The Home Ministry had assigned it the task of authenticating the documents submitted by the Vishwa Hindu Parishad (VHP) and the All India Babri Masjid Action Committee (AIBMAC).

Suraj Bhan made these observations on the basis of the excavations done by Professor B B Lal during 1975-80, his own study of the archaeological remains at Ayodhya, and evidence collected in 1969-70,

"There is nothing wrong in looking for a kernel of truth in the literary tradition of the Ramayana. But what is necessary for a scientific methodology is to build a reasonable hypothesis about the structured entity which must have been objectively in existence in the past. The metaphor of kernel would not encourage the scientist to critically examine either the evidence buried in the texts or the material evidence collected through excavations in order to identify the structure of relationship embodied in the evidence. Merely locating the names of personages

and places in the time frame does not suffice for this purpose. It will only confirm the vague understanding of history we have unconsciously imbibed through what is called common sense.... What has limited the significance of B B Lal's attempt is the vague notion of history that is implicit in his approach.... On account of the limitations of Professor B B Lal's approach mentioned above, we cannot accept his view that archaeological evidence proved the historicity of Ram as a personage who lived at the site where the present day Ayodhya is located during the period of early NBP [northern black polished] ware (circa 700 BC) or that he was born at the place where Babri Masjid today stands.”

The second report, titled “Ramjanmabhumi Babari Masjid - A Historians' Report to the Nation”, was authored by historians R.S. Sharma, M Athar Ali, D N Jha and Suraj Bhan. R S Sharma and D N Jha were professors of History at the University of Delhi (Sharma was also the first Chairman of the ICHR) and Athar Ali was Professor of History at Aligarh Muslim University. That the dispute whether a Ram temple existed at the site of the Babri Masjid was being left entirely to the litigants and had not involved historians of any standing worried the four historians. They approached the government to consider the views of independent historians and also requested that archaeological and textual evidence in possession with government organisations such as the Archaeological Survey of India (ASI) be made available to them.

While the AIBMAC agreed to abide by the findings of an independent group of historians, the VHP did not accept it. The government maintained a tactical silence all along. Undeterred, the four historians embarked on the project on their own in the national interest as they felt that people had a right to know the historical facts.

The very first thing they noted was that the VHP had been unable to cite any ancient Sanskrit text in support of its claim that there was an ancient Hindu belief that a particular spot in Ayodhya was the Ram Janmasthan (birthplace of Ram). The report concluded, after looking at various pieces of textual and archaeological evidence, including Tulsidas' *Ramcharitamanas*, that no evidence existed in the texts of any veneration being attached to any spot in Ayodhya before the 16th century (and

indeed before the 18th century) for being the birthplace of Ram and that there were no grounds for supposing that a Ram temple or any temple existed at the site where the Babri Masjid was built in 1528-29.

Their conclusion rested on an examination of the archaeological evidence as well as the contemporary inscriptions on the mosque. They concluded that the legend that the Babri Masjid occupied the site of Ram's birth did not arise until the 18th century and that a temple was destroyed to build the mosque was not asserted until the beginning of the 19th century. They held that the full-blown legend of the destruction of a temple that stood at the site of Ram's birth and at Sita ki Rasoi came as late as the 1850s. "Since then, what we get is merely the progressive reconstruction of 'imagined history' based on faith," noted the four historians in their report to the nation.

After examining the inconsistencies in the VHP claim based on the Ayodhya Mahatmya (the merits of visiting Ayodhya) given in the Skanda Purana, the core of which was not compiled earlier than the 16th century, the historians noted, "In spite of these various inconsistencies, even if we accept the location of the birthplace of Rama as given in the Ayodhya Mahatmya, it does not tally with the site of the Babri Masjid... according to Hindu belief as given in the Ayodhya Mahatmya of the Skanda Purana, the birthplace of Rama cannot be located on the site where the Babri Masjid stands.

It is argued by the experts of the VHP that the location of the Ram Janmabhumi is given on the basis of solar directions and cannot be determined through the use of the compass. But even if we take solar directions into account, the Janmabhumi of the Skanda Purana cannot be located on the site of the Babri Masjid. The various versions of Ayodhya Mahatmya seem to have been prepared towards the end of the 18th century or in the beginning of the 19th; even as late as that the birthplace was not considered to be important. It is significant that the Janmasthan is not mentioned even once in any itinerary of pilgrimage given in the Mahatmya."

The historians also relied on the most primary source of recorded historical evidence, the Persian inscriptions on the mosque. Presenting

a full translation of the inscriptions, the historians observed that the contemporary nature of the inscriptions was shown by their text and date, and their accuracy was established by the fact that Mir Baqi finds mention in Babur's memoirs as the governor of Awadh or Ayodhya at exactly the same time.

The report noted, "These fairly long inscriptions show that the construction of the Babri Masjid was completed in 1528-29. But nowhere is any hint given in them that the edifice was built after destroying a temple or upon the site of a temple. If one accepts for the purpose of argument that there was a temple at the site, and the builder of the mosque (Mir Baqi) destroyed it to build a mosque, one has to answer why at all should all reference to this fact be omitted in the foundation inscriptions. Surely, had Mir Baqi destroyed a temple, he would have deemed it a meritorious deed; and what would have been more natural than that he should get this act recorded along with that of the building of the mosque to add to his religious reputation. That he did not get any such act recorded surely means that he had in fact not destroyed any temple, and so found no reason to record something that had not happened."

Expressing surprise at Tulsidas' *Ramcharitamanas* also not mentioning the desecration of a temple at the site of the mosque, the historians wrote, "Within fifty years or so of the construction of the Babri Masjid, Tulsidas composed in 1575-76 his celebrated *Ramcharitamanas*, the most fervent exposition of the Ramayana story in Avadhi. Is it possible to believe that Tulsidas would not have given vent to the heart-rending grief had the very birth site of his Lord been ravaged, its temple razed to the ground and a mosque erected at that place? His silence can only mean that he knew of no such scandal; and given his attachment to Rama and Ayodhya, this must mean that no such event had in fact taken place. Tulsidas, on the contrary, suggests that it was not Ayodhya but Prayag that was to him the principal place of pilgrimage (tirath raj); and so no tradition of the veneration of any spot as that of Rama's birth at Ayodhya had yet taken shape."

The historians added that even Abul Fazl, in his *A'in-i-Akbari*, completed in 1598, wrote about Ayodhya being the "residence of

Ramachandra, who in the Treta age combined in his own person both the spiritual supremacy and the kingly office” but did not confine Ram's place of birth to the existing town of Ayodhya, let alone the site occupied by the Babri Masjid. “Had such tradition existed, Abul Fazl would surely have mentioned it, because he does mention the tradition that the two Jewish prophets lie buried at Ayodhya,” they noted in their report.

As for the black pillar bases that were used to vouch for the existence of a temple, the historians noted, after examining many records, including those of art historians, that there was nothing to show that “the pillar bases were remains of a local temple of which they formed an integral part in the beginning and the mosque was erected over them”.

In his own report to the ICHR, Suraj Bhan wrote of the pillars, “This is a wild hypothesis not backed by any material evidence and is actually negated by the factual position easily verifiable from the existing structure of the Babri Masjid.

The stone pillars are, in fact, embedded at the arched entrances in the massive walls of the mosque and stand at the floor level on the foundation walls constructed for the big building. Only those who have failed to understand the architectural plan of the building and wilfully ignore the indisputable factual position will insist on seeing these stone pillars as in situ. Since black stone pillars are relatively short and slender, they cannot be load bearing. In fact, their placement at the arched entrances and the colour contrast they offer as also the carvings on them suggest that they have been used only as decorative pieces and are not architecturally functional beyond this decorative purpose. Furthermore, the placement of the pillars fits in the plan of the mosque and not that of a Hindu temple.”

The 30 September judgment has evinced strong reactions from a cross-section of historians and archaeologists. On behalf of the Safdar Hashmi Memorial Trust, 62 academics, including Romila Thapar, Irfan Habib, D N Jha, K M Shrimali, K N Panikkar, Utsa Patnaik, Shireen Moosvi, Amiya Kumar Bagchi, Suvira Jaiswal and Arjun Dev, have demanded that the notebooks, artefacts and other material evidence

relating to the ASI's excavation at the site be made available for scrutiny by scholars, historians and archaeologists.

First of all, the view that the Babri Masjid was built on the site of a Hindu temple—which has been maintained by two of the three judges who gave the verdict—does not take into account all the evidence given by the ASI's own excavations. The presence of animal bones throughout and the use of "surkhi" (made from powdered burnt bricks) and lime mortar (all characteristics of Muslim presence) rule out the possibility of a Hindu temple having been there beneath the mosque. The judgment, the academics said, had raised serious concerns about the way history, reason and secular values, which much of rational India shared, had been treated.

### **Force of Faith Trumps Law and Reason\***

The Lucknow Bench of the Allahabad High Court has made judicial history by deciding a long pending legal dispute over a piece of property in Ayodhya on the basis of an unverified and unsubstantiated reference to the "faith and belief of Hindus."

The irony is that in doing so, the court has inadvertently provided a shot in the arm for a political movement that cited the same "faith" and "belief" to justify its open defiance of the law and the Indian Constitution. That defiance reached its apogee in 1992, when a 500 year old mosque which stood at the disputed site was destroyed. The legal and political system in India stood silent witness to that crime of trespass, vandalism and expropriation. Eighteen years later, the country has compounded that sin by legitimising the "faith" and "belief" of those who took the law in their own hands.

The three learned judges of the Allahabad High Court may have rendered separate judgments on the title suit in the Babri Masjid-Ramjanmabhoomi case but Justices Sudhir Agarwal, S U Khan and Dharam Veer Sharma all seem to agree on one central point: that the Hindu plaintiffs in the case have a claim to the disputed site because "as per

[the] faith and belief of the Hindus" the place under the central dome of the Babri Masjid where the idols of Ram Lalla were placed surreptitiously in 1949 is indeed the "birthplace" of Lord Ram.

For every Hindu who believes that the spot under the central dome of the Babri Masjid is the precise spot where Lord Ram was born there is another who believes something else. But leaving aside the question of who "the Hindus" referred to by the court really are and how their actual faith and belief was ascertained and measured, it is odd that a court of law should give such weight to theological considerations and constructs rather than legal reasoning and facts. Tulsidas wrote his *Ramcharitmanas* in 16th century Ayodhya but made no reference to the birthplace of Lord Rama that the court has now identified with such exact precision five centuries later.

The "faith and belief" that the court speaks about today acquired salience only after the Vishwa Hindu Parishad and the Bharatiya Janata Party launched a political campaign in the 1980s to "liberate" the janmasthan.

Collectives in India have faith in all sorts of things but "faith" cannot become the arbiter of what is right and wrong in law. Nor can the righting of supposed historical wrongs become the basis for dispensing justice today. In 1993, the Supreme Court wisely refused to answer a Presidential Reference made to it by the Narasimha Rao government seeking its opinion on whether a Hindu temple once existed at the Babri Masjid site. Yet, the High Court saw it fit to frame a number of questions that ought to have had absolutely no bearing on the title suit which was before it.

One of the questions the court framed was "whether the building has been constructed on the site of an alleged Hindu temple after demolishing the same." Pursuant to this question, it asked the Archaeological Survey of India to conduct a dig at the site. This was done in 2003, during the time when the BJP-led National Democratic Alliance government was in power at the Centre. Not surprisingly, the ASI concluded that there was a "massive Hindu religious structure" below, a finding that was disputed by many archaeologists and historians.

The territory of India - as of many countries with a settled civilisation as old as ours - is full of buildings that were constructed after pre-existing structures were demolished to make way for them. Buddhist shrines made way for Hindu temples. Temples have made way for mosques. Mosques have made way for temples. So even if a temple was demolished in the 16th century to make way for the Babri Masjid, what legal relevance can that have in the 21st century? And if such demolition is to serve as the basis for settling property disputes today, where do we draw the line? On the walls of the Gyanvapi mosque in Varanasi can be seen the remnants of a Hindu temple, perhaps even of the original Vishwanath mandir. Certainly many "Hindus" believe the mosque is built on land that is especially sacred to them. The denouement of the Babri case from agitation and demolition to possession might easily serve as a precedent for politicians looking to come to power on the basis of heightening religious tensions.

Even if we assume that the tainted ASI report is correct in its assessment that a Hindu temple lay below the ruins of the Babri Masjid, neither the ASI nor any other expert has any scientific basis for claiming the architects of the mosque were the ones who did the demolishing. And yet two of the three High Court judges have concluded that the mosque was built after a temple was demolished.

From at least the 19th century, if not earlier, we know that both Hindus and Muslims worshipped within the 2.77 acre site, the latter within the Babri Masjid building and the former at the Ram Chhabutra built within the mosque compound. This practice came to an end in 1949 when politically motivated individuals broke into the mosque and placed idols of Ram Lalla within. After 1949, both communities were denied access though Hindus have been allowed to offer darshan since 1986. In suggesting a three way partition of the site, the High Court has taken a small step towards the restoration of the religious status quo ante which prevailed before the politicians got into the act. But its reasoning is flawed and even dangerous. If left unamended by the Supreme Court, the legal, social and political repercussions of the judgment are likely to be extremely damaging.

## Justice in Ayodhya\*

How should India's Supreme Court treat the appeals certain to be filed before it against the Allahabad High Court judgment on the Babri Masjid issue, which dismisses the Sunni Central Waqf Board's title suit and says that the site was the birthplace of Lord Ram? Should the court strive to reconcile the Vishwa Hindu Parishad with the Waqf Board? or should it overturn the judgment?

Legality and constitutional principles clearly favour the second option, because Muslims were in undisputed possession of the site until 1992. That will also satisfy the one-eighth of India's people who are Muslims and the many secular Hindus, Sikhs, Christians and others who are unhappy with the verdict. The crucial distinction here is reason, democracy and legality, which is central to modern citizenship.

The judgment privileges a particular faith, elevates it to law and baselessly declares that Ram's birthplace lies beneath the mosque's central dome. It deprives Muslims of their entitlement to the mosque and the surrounding land, which they possessed for centuries. It trifurcates the 2.77acre plot between Ram Lalla (the infant Ram), Nirmohi Akhara, and the Waqf Board. This may appear even-handed. But, as we see below, it only adds to the verdict's injustice.

While some Muslims feel relieved that the VHP hasn't unleashed celebratory violence, most feel reduced to second-class citizens. Many are worried at the BJP's triumphalist description of the verdict as "a new phase in national integration" (read forced assimilation of minorities into a majoritarian culture) and Mr L K Advani's claim that "the situation no longer is faith versus law, it is faith upheld by law."

The VHP wants the Waqf Board to renounce its portion of the land, so that a grand Ram temple can be built, in return for land elsewhere. This anti-secular premise assumes that the two communities cannot coexist or worship close to each other. such one-sided "reconciliation" will compel muslims into giving up what is rightfully theirs.

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\* Praful Bidwai, The Daily Star, 18 October 2010

Many Muslims apprehend that the VHP will demand the possession of hundreds of other mosques, like those in Kashi and Mathura, on similar grounds.

The Supreme Court must address this by reaffirming the Places of Worship (Special Provisions) Act, 1991, which prohibits any change in the status of religious places. However, the court must go further and unravel the core of the judgment. The judgment conflates faith and fact. All three judges regard Ram Lalla a juristic person with the right to property. This should be wholly inadmissible in a modern judicial system. Two judges (Agarwal and Sharma) are certain that a temple existed before the masjid, although not when it was constructed or by whom. Justice Sharma asserts Ram is "everywhere" and his birthplace too is a "juristic person". Justice Agarwal quotes the Rig Veda to plead indeterminacy of the facticity of Ram and of divine creation; only to affirm that Ram was born at the Babri site. While asserting that Ram has existed since time immemorial, the judges ignore a 1988 report of the Archaeological Survey of India (ASI), which found no sign of human habitation in Ayodhya before 2000 BC. They hold that Ram is a historical person, because hindus believe so. in fact, they admit and decide a suit filed by Ram, "represented" by a "close friend" and former judge. All this even goes beyond the bjp's laughably irrational position that whether ram was born at the site or not is irrelevant; what matters is people's faith that he was. Justice Sighbatullah Khan takes the December 1949 smuggling in of Hindu idols to the mosque as evidence of Hindu-muslim "joint possession" and the basis of dividing the property in the crude way typical of village panchayats. he thus legalises a patently illegal act.

The judgment ignores the parties' rights and apportions land based on their relative strength or power. But the law and a modern judiciary must treat all citizens, irrespective of their strength as equal. The judgment relies on a BJP-commissioned 2003 ASI report, based on excavation at the site, itself a questionable exercise. Archaeological excavation is done by layers, to identify different periods by the discovery of pottery, etc.

This cannot produce reliable results if the mounds under examination have been dug up, as happened at the Babri site after 1992.

The 2003 excavation finds were animal bones, burnt-brick powder and lime mortar typical of medieval islamic construction, and pillars belonging to a much earlier period than 1528. The judgment accepts the Babri demolition as an accomplished fact, and legitimises it and the following violence. This cannot be excused on the plea that the court was only deciding a title suit and not the legality of the demolition. If the mosque was still standing, the case wouldn't have taken this form. Yet, the judges were deciding petitions filed before the demolition. This violates all logic and rationality. Former Uttar Pradesh Chief Minister Kalyan Singh was dismissed for colluding in the demolition and thus violating the constitutional tenet of secularism.

The Supreme Court upheld his dismissal in 1994, thus treating the demolition as illegal and unconstitutional. The judgment also violates this principle established by the court. The judgment follows the "PN Oak school of history," fashioned by a semi-literate bigot, who believed that India's great Islamic monuments were all Hindu temples, including the Taj Mahal!

These charlatans believe that Indians in the Vedic ages had manufactured airplanes and nuclear weapons. This shows how intellectually corrupted and communally compromised India's higher judiciary has become. The Supreme Court must follow the most rigorous constitutional-jurisprudential discipline in overturning the judgment and spelling out that the rights of Muslims cannot be allowed to be gutted by equating faith with fact and privileging one religion. The Allahabad judgment disempowers India's largest religious minority. This will cause strife and discontent rooted in rightful anger at its illegality and irrationality. India can afford neither communal biases in the judiciary and terrible abuse of law nor large-scale popular disaffection if it is to survive as a democracy.

### **Not About Blind Faith\***

People's faith in the rule of law can't be interpreted as their unquestioning acceptance of law that is based on faith. Unfortunately, such

\* Sitaram Yechury, *Hindustan Times*, 11 October 2010

an interpretation is what appears from the judgement delivered by the three-member Lucknow Bench of the Allahabad High Court on the over 60-year old petitions seeking adjudication of the title deed of ownership of the disputed Babri Masjid-Ram Janmabhoomi land. These judicial pronouncements are, therefore, seen by many as more a political adjudication than a legal one. Surely there will be appeals in the Supreme Court.

L K Advani, who spearheaded the Ram Janmabhoomi agitation by leading the infamous Rath Yatra' that culminated in a bloody trail of communal riots and the eventual demolition of the Babri Masjid, has rushed in claiming that, "the situation no longer is faith versus law, it is faith upheld by law".

In the evolution of human civilisation, the dividing line between mythology and history and between theology and philosophy has always resulted in conflict situations. The ease with which myths are passed off as real historical facts have, indeed, laid the foundations of many constructs of nationalism. Noted writer Karen Armstrong, in her work on the history of myths informs that they assume a peculiar character of being real while not based on reality. On the widely held belief that myths constitute the collective historical memory of the people, noted historian Eric Hobsbawm says, "It's not a question of people constantly remembering; they remember because someone is constantly reminding them." So, people are constantly reminded in order to rouse their passions to serve a political end.

In a modern, secular, democratic republic, such matters will have to be settled in the political realm. In the judicial realm, the courts are meant to adjudicate on the basis of evidence, facts and legal provisions and not on the basis of "faith" and "belief". The symbol of justice, universally, is that of a lady with her eyes covered and holding a pair of scales that are evenly balanced. Justice, thus, is blind to the relative strengths of the political mobilisations, or, for that matter, any other social strength of the contesting claims. It is based entirely on the law of the land that is derived from our Constitution.

Naturally, this judgement raises many serious questions. For in-

stance, would the judgement have been the same if the Babri Masjid was not demolished and continued to stand today? This is relevant in the sense that when the petitions were filed before the court, the Babri Masjid stood on that very spot. Does the judgement, therefore, justify the demolition? The demolition was universally condemned and is seen as the biggest disfigurement of secularism, which the apex court decreed as a fundamental feature of our Constitution. In fact, on this basis, the apex court had upheld the then P V Narasimha Rao government's decision to dismiss some state governments on the ground that they had mobilised karsevaks for the demolition of the Babri Masjid.

Likewise, what about the FIR lodged by sub Inspector Ram Dube of Ayodhya police station stating that a group of 50-60 people stealthily placed the idols of Ram and Sita in the central dome of the Masjid on the night of 22-23 December 1949. The later sequence of events—the locking and the much later unlocking of the mosque's doors etc.,—are vividly recorded by the Supreme Court in its judgement in the *Ismail Faruqui vs Union of India* (1994) case. All these raise serious questions about the jurisdiction of the courts to adjudicate on the matters of "faith" and "belief".

After the judgement, slowly but steadily, the shrillness is mounting, asking the Muslims to give up their one-third of the land and join the "building of a grand temple" in a gesture of reconciliation. Efforts are building up for a fresh round of communal polarisation in the name of reconciliation. When the hated apartheid regime was defeated in South Africa, the Nelson Mandela government had to confront the issue of reconciliation between the victims and perpetrators of inhuman crimes. After a wide and an intensely passionate debate, a seminal conclusion was arrived at: Justice was a pre-requisite for reconciliation rather than an alternative to it. Thus was constituted the Truth and Reconciliation Commission.

Thus, reconciliation is possible only when the truth is established first. Justice will follow accordingly. The truth, in this case, is that the Babri Masjid existed for over four centuries. The High Court, however, relied more on the "faith" of the people who believe that Lord Ram was

born on this very spot. Apart from appearing as a post facto justification of the demolition, the judgement also gives a legal clearance to the slogan "Mandir wahin banayenge". Can the legal outcome of a property dispute be influenced by an act of illegal demolition? Separate legal proceedings are pending on cases related to the demolition of the Babri Masjid. Justice must be delivered on these matters.

The Supreme Court will now have to deliver justice upholding people's "faith" in the rule of law and not on a law that is based on "faith". This has to be in conformity with the blindness and the evenhandedness of the Lady of Justice. This judicial process is the only recourse that people have to seek a solution to such disputes. It is, therefore, incumbent to thwart all efforts that seek to sharpen communal polarisation. This judicial process must be allowed to come to its conclusion and deliver justice without any pressures being mounted that can weaken the secular, democratic foundations of modern India.

### **See Clearly, Take off Communal Blinkers\***

The Ayodhya verdict is a done deed. Three courses of action are now open to the stake-holders. They can challenge it in the apex court, or accept it in its entirety without ado, or use it as a basis for a settlement that requires no more legal intervention. The first course holds the promise, however distant or forlorn, of setting to rest the serious doubts that the verdict raises. The nation needs to know without ifs and buts whether the belief and faith of any section of the citizenry merits a place in our jurisprudence.

This is all the more urgent because in the thousands of pages of the verdict, there is from all accounts not even a passing mention of the vandalism witnessed in Ayodhya in December 1992. No reference to the death and destruction is left in its trail. There is no appeal to the perpetrators of that heinous act to express remorse and no call for atonement. There is not even a word of empathy for the victims of the violence.

The main advantage of the second course i.e., accept the verdict and

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\* Dileep Padgaonkar, *The Times of India*, 10 October 2010

hasten to implement its operative part, is that it allows the stakeholders to take their future steps on a legal footing. With the area under dispute equally divided between the three parties, each is at liberty to erect a structure of its choice on the portion that now rightfully belongs to it. Its right to do so cannot be questioned on any ground -- legal or moral, political or ideological.

However, any attempt in this direction is fraught with risk. The very people who hailed the verdict as the epitome of judicial wisdom, statesmanship, foresight and robust pragmatism are eager to emasculate its substance. They aren't content with the trifurcation of the land. At the core of their appeal to permanently settle the dispute in a spirit of give and take—the third course of future action—lies a demand with an ominous ring to it: Muslims must be magnanimous enough to renounce the area that belongs to them to pave the way for the construction of a massive ram temple. for this singular gesture of generosity, they will be richly compensated with a large tract of land miles away from the proposed temple to build a mosque. kept at a safe distance from each other, they can live in peace and harmony for all time to come.

Underlying this approach is the conviction that the hindus and muslims cannot worship in adjacent areas. oddly enough, even liberals who have not been contaminated by the communal virus seem to endorse it. they too subscribe to the thesis that the muslims would be serving the larger good should they agree to voluntarily leave ayodhya with bag and baggage. The votaries of this sort of 'reconciliation' would vastly strengthen their case if they advocated, in the same breath, ways and means to expel all demons of communalism from our body politic. Perpetrators of the December 1992 vandalism must apologize to the nation for that dastardly act; undertake not to raise any Ayodhya-like issue in future; cease to regard minorities as fallen or de-frocked Hindus who need to return to the parent faith; end all talk of appeasement and desist from foisting their notions of 'cultural nationalism' on a resurgent nation that swears by another credo: the geek will inherit the earth.

This is admittedly a tall order. The 'sober' and 'mature' reactions of the Sangh Parivar to the Ayodhya verdict did not prevent L K

Advani from claiming that it vindicated his 'rath yatra' of 1989. The BJP patriarch thought it fit to gloat over that blood-soaked journey. In comparison, the reaction of Mohan Bhagwat, the RSS chief, seemed to echo, partially to be sure, the sentiments of pseudo-secularists! He reached out to the Muslim community without a trace of triumph.

Such an attitude provides the Muslims with a small window of opportunity to strike a deal, no matter how irksome, that is in keeping with their immediate and long-term goals: To enjoy, like other citizens, security of life and limb, a future free of want and fear for their children, liberty to practice their faith and protect their culture without hindrance and, no less important, to lead a life of dignity. That appears to be the driving force of several initiatives now underway in Ayodhya, Lucknow and Delhi to get this contentious issue out of the way once and for all.

Significant in this regard is the rebuff that the likes of Mulayam Singh Yadav and Kalyan Singh have received from Muslims and Hindus alike for seeking to exploit the Ayodhya verdict to revive their political fortunes. A similar fate awaits hot-heads in both communities. Therefore, any effort that seeks to curb forces of religious extremism and terrorism deserves to be given a chance to succeed—whether it is undertaken, simultaneously or otherwise, at the level of the Supreme Court or in talks between the contending parties. Voltaire, a foe of clerics, had once observed: God is always for the big battalions. India, where the divine is seen to dwell even in a dolt, a rake and a harlot, doesn't buy that majoritarianism.

### **Ayodhya verdict, Advani's windfall\***

The court took note of the 'belief' of the Hindus. This, according to the majority judgment, gave the avowedly pro-Hindu outfits the title to the site and the right to build a temple over the Babri's ruins.

The verdict has brought the Bharatiya Janata Party (BJP) and its band a victory beyond their wildest anticipations.

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\* J Sri Raman, *Daily Times*, 8 October 2010

This is not just because the Lucknow Bench of the Allahabad High Court, hearing the Ayodhya case, decided the dispute in favour of the organisations claiming to represent the Hindus. The BJP and the Parivar (the far right family) have not stopped celebrating because the judgment, in effect, justified the Babri Masjid demolition of December 1992.

The court took note of the 'belief' of the Hindus that the site under the central dome of the destroyed mosque was the birthplace (Janambhoomi) of Hindu deity Ram. This, according to the majority judgment, gave the avowedly pro-Hindu outfits the title to the site and the right to build a temple over the Babri's ruins. By the logic of the ruling, the mosque-breakers were only razing an illegal structure to the ground, or removing an encroachment. This may not have been a legal remedy, but a historical redress—as a layman might have read the ruling.

Attempts are being made ever since the pronouncement of the verdict to obfuscate this most important of its implications. The attempts are being made by sections and spokespersons of both the BJP and the ruling Congress.

The first response from the pro-mandir (temple) camp came, fittingly, from its pioneer, BJP luminary and the former deputy prime minister, Lal Krishna Advani. Commending the court for placing "faith over law", he claimed the verdict came as a "vindication of my rath yatra". The allusion was to his 'chariot ride' (in a decked-up car) across the country towards Ayodhya, which left a long trail of blood and led to the demolition.

Notably, he did not repeat his oft-reiterated statement that the date of demolition was "the saddest day of my life". Presumably, the Iron Man of the BJP thinks that a posture of contrition is no longer needed to protect him in the separate demolition case.

A supposedly more sophisticated interpretation of the verdict has come from Arun Jaitley, leader of the Opposition in the Rajya Sabha (Upper House of India's Parliament) and a successful Supreme Court lawyer. According to him, the high court has based itself not on 'faith' but the 'facts' of popular perception. Not content with this quibbling, he goes on to say that this was an issue not raised before

the court but one 'framed' by it. He does not ask whether the court had the authority to answer this question or whether it ordered any opinion-based survey to ascertain the belief or the popular demand or desire for action on this basis.

A senior journalist, solicitously defending the court, argues that the inadequacies of individual judges cannot detract from the judiciary's authority just as those of a legislator cannot make the legislature any less august. The analogy may be misleading. The better comparison of this verdict may be to a less than constitutional enactment by a legislative majority.

Meanwhile, Uma Bharti, a 'family' firebrand who had called upon the mob to give the mosque a final push, has contradicted Jaitley by saying that the verdict proves the veracity of the claim that Ram was indeed born at that specific site. Another Hindutva hot-head, Vinay Katiyar, however, is disappointed at the verdict because it also gives a Muslim organisation some space in the area around the demolished structure for building a new mosque.

As for the Congress, Union Home Minister P Chidambaram has voiced the party's and the government's clever, if contrived, position. He asserts that the court has not condoned the demolition because it cannot justify any group of people "taking the law into their own hands". The BJP's interpretation of this can be that the minister is implicitly acknowledging that demolition would have been all right if carried out by an agency of law after a due process. The Hindutva hardliners can also argue that the demolition squad took the law into its own hands because law-enforcing agencies did not listen to their demand and act accordingly.

Chidambaram and other leaders of the Congress and the United Progressive Alliance (UPA) government have carefully refrained from mentioning the real core issue involved. It is one of religious-communal fascism. What made the demolition much more than a petty criminal offence, of the kind resulting every other day from real estate rivalries, is the politics of communal mobilisation and seeking a political harvest from a systematically manufactured Hindu-Muslim hatred.

## Muslims Wronged\*

The judgments delivered by the Lucknow Bench of the Allahabad High Court on September 30 on the Babri Masjid cases not only flagrantly violate the law and the evidence but a binding unanimous judgment of the Supreme Court on the Babri Masjid case itself ( *M Ismail Faruqi and Others vs Union of India and Others* (1994) 6 Sec 360). It sanctified the conversion of a historic mosque, which had stood for 500 years, into a temple.

The country showed maturity by receiving the judgments with calm and dignity despite an obscene attempt by some members of the Bharatiya Janata Party to demand instant Muslim submission to the wrong, a fact which was noted pointedly by a distinguished political scientist on television where, for the most part, loud ignorant anchors had a field day with guests no better-equipped. Stability is important in nation building. As important is justice to all. On the Babri Masjid, for 60 years from 1950 to 2010, Muslims have been woefully wronged by every single court ruling, including that of the Supreme Court after the demolition of the mosque on December 6, 1992. One of the leaders of the Bar remarked more than once that the Bench of the Supreme Court that heard the case split along communal lines.

On one point all the three judges of the Lucknow Bench—Justices D V Sharma, Sudhir Agarwal and S U Khan—were in remarkable and laudatory agreement—idols of Ram were placed inside the mosque on the night of December 22-23, 1949. The Rashtriya Swayamsewak Sangh's Organiser of March 29, 1987, said they “miraculously appeared there”. The BJP's White Paper on Ayodhya said they had “appeared” there. L.K. Advani used the same expression. The court has confirmed a truth which was known to all and confirmed the Parivar's contempt for the truth.

But the three judges do not realise the legal implications of the truth they themselves acknowledged. Here are some incontrovertible and uncontroverted official documents:

1. Two reports dated 10 and 23, December 1948, by the Inspector of Waqfs, Mohammed Ibrahim, after visits to the Babri mosque. He recorded the harassment and stoning of the namazis going to the mosque. Yet prayers continued to be offered just before dawn and on Fridays (Chapter IV, Doc. 5).
2. Official support to an application by Hindus in 1949 to build a Ram temple on the Chabutra near the mosque. The City Magistrate's Report of October 10, 1949, recorded: 'Mosque and temple are situated side by side and both Hindus and Muslims perform their rights and religious ceremonies.... The Hindu population is very keen to have a nice temple at the place where Bhagwan Rama Chandra Ji was born. The land where the temple is to be erected is of Nazul' (Chapter IV, Doc. 6).
3. The First Information Report on December 23, 1949, lodged by Sub-Inspector Ram Dube, Police Station, Ayodhya, reads thus: According to Mata Prasad (paper no. 7), when I reached to [sic] Janam Bhumi around 8 o'clock in the morning, I came to know that a group of 50-60 persons had entered the Babri mosque after breaking the compound gate lock of the mosque or through jumping across the walls (of the compound) with a stair and established therein, an idol of Shri Bhagwan and painted Sita, Ram, etc. on the outer and inner walls.... Ram Das, Ram Shakti Das and 50-60 unidentified others entered the mosque surreptitiously and spoiled its sanctity. Government servants on duty and several others are witness to it. Therefore, it is written and filed (Chapter V, Doc 2).
4. Radio message on 23 December 1949, by District Magistrate K K Nayar to the Chief Minister, Chief Secretary and Home Secretary: "A few Hindus entered Babri Masjid at night when the Masjid was deserted and installed a deity there....Police picket of fifteen persons was on duty at night but did not, apparently, act" (Chapter V, Doc 3).
5. 26 December 1949, Nayar to Chief Secretary: "Installation of the idol was carried out in the night between 22 and 23 instant" (Chapter V, Doc 5).

6. Ramchandra Das Paramhansa's admission to *The New York Times* on 22 December 1991, that he had installed the idol (Chapter V, Doc 16).
7. Prime Minister Jawaharlal Nehru's wire and letters to Chief Minister G B Pant (Chapter V, Doc 18).
8. Deputy Prime Minister Vallabhbhai Patel's letter to Pant on January 9, 1950 (Chapter V, Doc 19).
9. Akshaya Brahmachari's letters and memorandum to Home Minister Lal Bahadur Shastri (Chapter V, Doc 21).
10. The Imam of the Babri Masjid, Abdul Ghafar's interview in 1987 (Chapter V, Doc 11).
11. Written statement in court by the State of Uttar Pradesh, signed by Deputy Commissioner, Faizabad, J N Ugra, on 25 April 1950 (Chapter V, Doc 13).

**Paragraphs 12 and 13 read thus:**

12. That the property in suit is known as Babri Mosque and it has for a long period been in use as a mosque for the purpose of worship by the Muslims. It had not been in use as a temple of Shri Rama Chandraji.
13. That on the night of 22 December 1949, the idols of Shri Rama Chandraji were surreptitiously and wrongly put inside it.  
In *The Statesman* of 26 October 1986, Chandan Mitra, now eminence grise of the BJP, quoted an official as saying, "Obviously the guard had been bribed heavily."

From July to September 1949, there were efforts to build a Ram temple on the chabutra (platform) outside the mosque but within its complex. The City Magistrate, Faizabad, went to the spot on October 10, 1949, and submitted a favourable report. Abdul Ghafar, the imam of the mosque, testified that until the end "we used to offer namaz inside the mosque and the Hindus prayed on the chabutra" (*Sunday Mail*, 2 July 1989). Litigation in the 19th century for permission to build a temple was confined to the chabutra—not the mosque (1883-1886).

The Gandhian Akshaya Brahmachari's detailed memorandum to Lal Bahadur Shastri recorded the campaign on the capture of the

mosque that was mounted in November 1949: "There is terror in the hearts of the Muslims of Faizabad."

The law is not impotent in such cases. Sections 295 and 297 of the Penal Code make the acts offences in law. Section 145 of the Criminal Procedure Code (CrPC) of 1898 empowers the magistrate to require the parties to file their claims, not on title to the property, but "as respects the fact of actual possession of the subject of dispute". He decides "which of the parties was" in possession. If a party has been "forcibly and wrongfully dispossessed", the magistrate may treat it as if it had been in possession. It is then restored in possession, leaving it to the aggressor to file a civil suit to establish his title to the property.

In Ayodhya this very Section was used to sanctify the Muslims' dispossession. Markandey Singh, Magistrate First Class, ordered the attachment of the "said buildings" and appointed Priya Dutt Ram, Chairman of the Municipal Board, as "receiver" of the mosque. This was on 29 December 1949. He took charge on 5 January 1950, and submitted a scheme. On 19 January 1950, a Civil Judge, Bir Singh, issued an injunction restraining removal of the idols from the mosque and from interfering with the puja carried on in the mosque since 23 December 1949. On 26 April 1955, the Allahabad High Court confirmed the injunctions.

### **Losing battle**

The conversion of a mosque into a temple was now complete. The Muslims lost, and were fated to lose, every round in the battles in the courts of justice for correction of the wrong perpetrated on 22-23 December 1949.

Contrast this with the order of the Sub-Divisional Magistrate, Parliament Street, New Delhi, A G Cutting, of 7 February 1972, in *The State vs Sadiq Ali and Others and S D Sharma and Others* under Section 145. He ordered restoration of possession of 7 Jantar Mantar Road (Congress House) in New Delhi to Congress (O). Not because it was the 'real' Congress but because it had been forcibly dispossessed by Congress (R) on 13 November 1971. That order was also made under Section 145 of the CrPC. A similar order should have been made in the

Babri Masjid case in 1949. The contrast is glaring. As Magistrate Cutting said, the Congress (O)'s men "were dispossessed. They are therefore entitled to be put back into possession until they are evicted from the said premises by an order of a competent court" (in a regular civil suit on title). In the Ayodhya case, the Receiver's scheme, predictably, said "the most important item of management is the maintenance of Bhog and Puja in the condition in which it was carried on when I took over charge". There were to be at least three pujaris who "should be allowed free access" to the installed idols. Under the scheme, Muslims were altogether forbidden to pray in the mosque; Hindus were permitted to offer puja and have darshan of the idols from a side gate and make offering through four pujaris employed by the Receiver who was appointed by the Magistrate.

Civil suits on title were filed by the parties which were decided on 30 September 2010. The next round was on 25 January 1986, when a lawyer filed an application for removal of restrictions on the puja. On 1 February 1986, District Judge K M Pandey ordered the opening of the locks after 45 minutes' hearing. The Muslims were not impleaded in the application and were not heard by the judge. On 3 January 1986, the Lucknow Bench of the High Court ordered maintenance of the status quo.

The next step was the demolition of the Babri Masjid on December 6, 1992. On 7 January 1993, the President promulgated the "Acquisition of Central Area at Ayodhya Ordinance" acquiring the site of the mosque – later enacted as an Act of Parliament and asked the Supreme Court for its advisory opinion on this question: "Whether a Hindu Temple or any Hindu religious structure existed prior to the construction of the Ram Janmabhoomi-Babri Masjid (including the premises of the inner and outer courtyards of such structure) in the area on which the structure stood?"

### **Fruit of crime**

The demolition squad of the so-called karsevaks had built a temporary structure after the demolition and kept the idols there. On 9 December West Bengal Chief Minister Jyoti Basu asked the Centre to demolish

this fruit of crime. The Union Home Secretary Madhav Godbole refused to pray there. "God could not reside in that temple, the construction of which was associated with so much deceit and wanton violence" (Unfurnished Innings, pages 406-407).

Alarmed at the sheer absurdity of the President's query to the Supreme Court, the country's foremost lawyer N A Palkhivala wrote a devastating critique in *The Times of India*. It has acquired added relevance after the judgment of 30 September. He wrote:

"It is to my mind absurd to suggest that the highest Court in the country should be asked to decide questions of history or archaeology. But the government has now asked the Supreme Court to give its opinion under Article 143 of the Constitution, whether a temple existed centuries ago on the site where the Babri Masjid stood before its demolition.

"Historians have expressed widely divergent views on the issue whether there was a pre-existing temple on the site on which the mosque was built by Babur. Much less are they agreed that Rama was born at that place. There is even a greater difference of opinion on the question whether Rama actually lived as a human being or whether he was the supramental ideal created by mythology to represent the perfect man. To ask the Supreme Court or the Allahabad High Court to decide such questions of mythology or history, or mixed questions of mythology and history, is to bear witness to the bankruptcy of our political institutions.

"It is a measure of the degradation to which we have reduced our third-rate democracy that we have lost all sense of propriety, and are not only willing but eager to call upon the Courts to decide questions of opinion or belief, history, mythology or political expediency. Never in the history of any country have Courts been approached to deal with the type of questions which are now suggested as fit to be referred to the Courts in connection with the incidents at Ayodhya.

"The consequences of asking the Supreme Court or the Allahabad High Court to deal with the type of questions which are suggested for reference would be disastrous in the long run.

"It would thrust upon the court a task for which it is not qualified by training or experience. Courts can deal with questions of law or of

fact. They are not qualified to deal with questions in other fields like archaeology or history. A judge can decide only upon documentary evidence or evidence given by a witness as to what he himself saw or heard. It is well established that hearsay evidence is inadmissible in a court of law under the Indian Evidence Act.

“If the court is pushed into the political arena, it would impair the image and undermine the status of the court....

“Archaeology is the study of the art, customs and beliefs of ancient times. It can afford a ground for belief or an opinion but never for universal certainty. Cannot two minds come to different conclusions on the same archaeological evidence? How can a conclusion reached by a judge be binding on people whose opinions or beliefs go counter to those of the judge?”

Palkhivala was vindicated by the Supreme Court, while his warnings have been proved all too sound now by the Lucknow Bench.

#### **Presidential reference**

A five-member Bench of the Supreme Court—Justices M N Venkatachaliah, J S Verma and G N Ray in the majority—upheld the Act, bar one provision which abated the civil suits in the High Court. Justices A M Ahmadi and S P Bharucha held the entire Act to be void. All agreed that the Act and the reference for an advisory opinion were an integral whole. But while Justice Verma, who spoke for the majority, belittled the moral and legal significance of the mosque's demolition, an offence in law, and did so as judges tend to do in high-flown rhetoric, Justice Bharucha, who spoke for the minority, reckoned with the crime fully and, unlike the majority, refused to perpetuate the situation it had created. Section 7 (2) of the Act asked the government to “ensure that the position existing before the commencement of this Act ... is maintained.”

Justice Verma ruled shockingly that this affected both communities equally since the Muslims had “not been offering worship at any place” there after December 1949—a right they had only lost by deceit and force. Justice Bharucha subjected this logic to deserved and withering scorn.

However—and this is very relevant to the Lucknow Bench's ruling—the judges unanimously ruled that Section 4(3), which abated the

civil suits, was void. Why? Because it was one-sided and deprived the Muslims of the defence valid in law that a 500-year-old mosque by sheer adverse possession extinguished any claims to title based on history, real or imagined.

This is what Justice Verma said: "This also results in extinction of the several defences raised by the Muslim community including that of adverse possession of the disputed area for over 400 years since construction of the mosque there in 1528 AD by Mir Baqi. Ostensibly the alternate dispute resolution mechanism adopted is that of a simultaneous Reference made the same day under Article 143(1) of the Constitution to this Court for decision of the question referred. It is clear from the issues framed in those suits that the core question for determination in the suits is not covered by the Reference made, and it also does not include therein the defences raised by the Muslim community. It is also clear that the answer to the question referred, whatever it may be, will not lead to the answer of the core question for determination in the pending suits and it will not, by itself, resolve the long-standing dispute relating to the disputed area. Reference made under Article 143(1) cannot, therefore, be treated as an effective alternate dispute-resolution mechanism in substitution of the pending suits which are abated by Section 4(3) of the Act.... There can be no doubt, in these circumstances, that the Special Reference made under Article 143(1) of the Constitution cannot be construed as an effective alternative dispute-resolution mechanism to permit substitution of the pending suits and legal proceedings by the mode adopted of making this Reference. In our opinion, this fact alone is sufficient to invalidate sub-section (3) of Section 4 of the Act."

While Justice Bharucha said: "The provisions of Section 4 of the Act, inasmuch as they deprive the Sunni Waqf Board and the Muslim community of the right to plead and establish adverse possession as aforesaid and restrict the redress of their grievance in respect of the disputed site to the answer to the limited question posed by the Reference and to negotiations subsequent thereto, and the provisions of Section 3 of the Act, which vest the whole bundle of property and rights in the Central

government to achieve this purpose, offend the principle of secularism, which is part of the basic structure of the Constitution, being slanted in favour of one religious community as against another.”

He added: “The Act and the Reference, as stated hereinabove, favour one community and disfavour another; the purpose of the Reference is, therefore, opposed to secularism and is unconstitutional.”

He pointed out another flaw. “The Court being ill-equipped to examine and evaluate such material (on archaeology and history) it would have to appoint experts in the fields to do so, and their evaluation would go unchallenged. Apart from the inherent inadvisability of rendering a judicial opinion on such evaluation, the opinion would be liable to the criticism of one or both sides....” The Supreme Court gave this unanimous ruling on 24 October 1994. On 5 March 2003, the Allahabad High Court ordered excavation of the land and ruled that it did not violate the Supreme Court judgment. Why? Because “one of the important issues in the suit is whether there was any temple/structure which was demolished and mosque was constructed on the disputed site”.

But this was the very issue which had been referred by the President to the Supreme Court for its advisory opinion and the Court declined to answer it because of its irrelevance. The issue was whether adverse possession by the mosque extinguished other titles. The excavation order revived this irrelevant issue in breach of the Supreme Court judgment. The rest followed inexorably until 30 September 2010.

The court's order was criticised by archaeologists of the highest distinction in a statement on 10 March 2003. The task of excavation was assigned to a controversial agency. The Archaeological Survey of India's report has been widely criticised (vide *Ayodhya: Archaeology After Excavation* by D Mandal and Shereen Ratnagar, Tulika Books, 2007).

In his judgment on the land acquisition case, delivered on 11 December 1992, Justice SHA Raza of the Allahabad High Court rightly said that an “article of faith cannot be stretched to such an extent which threatens the Rule of Law. The contention that faith is beyond the jurisdiction of the Court is centred around the application of theocratic ideas”. Still less can the faith of one community become the law of the

land by a judicial ruling because it happens to be the majority community. But what if judges themselves rely on their own religious faith in their judicial orders? Justice DV Sharma's remarks on Ram and "the spirit of divine" in this context are eloquent enough. Courts can try only suits of a "civil nature" (Section 9 of the Civil Procedure Code) in matters of faith. Remember the Evidence Act permits expert evidence only on a few limited matters (Sections 45 to 50). History and archaeology are not among them. The Act itself is misread by Justice S.U. Khan, who held that "both the parties have failed to prove commencement of their title. Hence by virtue of Section 110 of the Evidence Act, both are held to be joint title holders on the basis of joint possession."

Section 110 says no such thing. It says, on the contrary, that "when the question is whether any person is owner of anything of which he is shown to be in possession of, the burden of proving that he is not the owner is on the person who affirms that he is not the owner" – in this case, the Sangh Parivar vis-a-vis the Babri Masjid. The Supreme Court has held that "a presumption of an origin in lawful title could be drawn... in order to support possessory rights, long and quietly enjoyed, where no actual proof of title is forthcoming". The longer the possession, the stronger the presumption. (1991 Supp (2), SCC 228 at pages 243-244). Records of the 19th century litigation disprove Justice Khan's inference of "joint possession". From such errors flow the bizarre order of a tripartite partition, which the media and others have so readily lapped up as an act of "judicial statesmanship".

The record since December 23, 1949, shows the judgment of September 30, 2010, to be a crowning act on consistent judicial injustices to Muslims in 1950, 1955, 1986 and 1994. In the Shahidganj masjid case, there was incontrovertible proof of a 1722 Waqf (trust) to build a mosque. But it came under the possession of Sikhs after 1762. In the 20th century from the District Court, the High Court of Lahore and the Privy Council ruled against the Muslims on the ground of adverse possession. The Premier of Punjab Sikander Hyat Khan rejected pleas for legislation to overturn the verdict. Jinnah supported him fully. The mosque, now a Sikh gurdwara, still stands in Lahore undemolished.

Calm has been preserved, creditably, but the pain inflicted on Muslims is not concealed. This is not how a secular edifice is built. It was left to Mohammed Hashim Ansari, the oldest living petitioner, to express the anguish, “Masjid bahut banegi, lekin desh nahi banenge” (Many more mosques will be built, but the nation will not be built this way). The Supreme Court can prove him wrong. Those who rushed to acclaim the order of September 30 revealed worse than ignorance. Their enthusiasm reflected indifference to right and wrong. We are not an island unto ourselves. What impression of our judiciary will courts elsewhere form?

### **Any retreat to pre-modernity is dangerous for democracy\***

There are three obvious problems with the Allahabad High Court judgment on the Babri Masjid issue. Each of them in isolation is potentially damaging for the constitutional fabric of the country; together they can cause irreparable harm.

The first is the obliteration of the distinction between “fact” and “faith”, which represents a serious retrogression to pre-modernity. In medieval times, witches were burnt because people believed that they engaged in evil deeds. A premise of modernity is that this and other such “beliefs” cannot be accepted as “facts”, that there has to be independent and credible evidence on the basis of which alone a “fact” can be established. Hence the verdict of the Lucknow bench that Ram was born at the very spot which was the sanctum sanctorum of the Babri Masjid, because “people” believed this to be the case, is as mystifying as it is retrograde.

There are, to start with, the obvious, but weighty, questions of who these “people” are, how many such “people” must be there to qualify being called “the people”, and what evidence the Lucknow bench had, even regarding the views of the “people”, other than what it might have gathered as a result of the activities, claims and mobilizations of a few Hindu organizations which professed to speak in the name of the

\* Prabhat Patnaik, *The Telegraph* Calcutta, 12 October 2010

“people”. To take the word of organizations that claim to speak in the name of the “people” as the voice of the “people” is dangerous enough. But to take the “beliefs” of the “people”, even assuming these are indeed the well-established “beliefs” of a very large number of people, as synonymous with “facts”, strikes at the very root of the rationality that must underlie a modern society.

The second disturbing aspect of the judgment is the obliteration of the distinction between “negotiation” and adjudication. The outcome of negotiations always depends upon the relative strengths of the protagonists. Hence in any situation of conflict, especially of the “either-or” sort, where the relatively stronger protagonist is absolutely intransigent over its claim, negotiations necessarily work to the detriment of the relatively weaker protagonist. In the present context, where the Hindu organizations were intransigent, any process of settlement through negotiations would necessarily have worked against the organizations belonging to the minority community. Since the latter considered this unfair, it went to the court of law. The basic reason for its going to the court therefore, or even for the matter being referred to the court, is that the outcome arrived at on the basis of relative strengths is not universally accepted as “fair”. The court is supposed to be fair because it does not settle issues on the basis of relative strengths but entirely on the basis of evidence, facts and legal provisions. The picture of justice, depicted as a maiden, typically has her eyes covered for this very reason, namely that justice is blind to the relative strengths, positions, powers, and pulls of the protagonists. The rationale of adjudication lies in the fact that its outcome is decided on principles entirely different from those underlying negotiations.

This is why the judiciary is different from societal (as opposed to State) institutions like khap panchayats. The latter are pre-modern, and hence anti-democratic, for two distinct reasons: first, the attitudes of such panchayats are pre-modern, based, as mentioned earlier, on “faith”, “beliefs”, “customs” and practices rather than “facts”; second, the decisions of these societal organizations necessarily and directly reflect the relative strengths of the protagonists and the power relations existing among them. The judiciary, by contrast, being a part of the State, and

hence based on a Constitution that guarantees equality before the law for everyone, is supposed to function with its eyes closed, uninfluenced by the relative strengths of the protagonists.

But when the outcome of adjudication itself becomes *de jure* dependent upon the relative strengths of the protagonists, then that represents a dangerous trend, a retrogression from modernity and democracy. And this is exactly what the Allahabad High Court judgment has done: it has based itself not on “facts” and law but on considerations of what might be acceptable. Since what might be acceptable depends upon the relative strengths of the protagonists, adjudication in this case has ceased to remain adjudication; it has got influenced by the relative strengths of the protagonists.

It is not surprising that after the verdict the Hindutva forces are talking about rapprochement, about peaceful settlement, about negotiated solutions. This is because their “reservation outcome”, that is, the “worst case scenario” possible from their point of view, as expressed by the Allahabad High Court verdict, is already favourable enough for them; they can only improve upon their position, by buying up the one-third share that the high court has given to the waqf board, and hence getting exclusive rights over the entire disputed land. The third problem with the judgment is that it has accepted the demolition of the Babri Masjid, an act that was a direct violation of the law of the land, as a *fait accompli*; and by remaining silent on this *fait accompli* while giving a verdict that echoes in essence what those who undertook the demolition were claiming, it has implicitly rationalized *post facto* that horrendous and unlawful act of demolition.

True, this court was not supposed to pronounce any verdict on the demolition; it was concerned with a property dispute. But, the obvious question arises: would it have given the land under the central dome of the Babri Masjid to “the Hindus” if the mosque were still standing? If it had done so, then it would have had to implicitly condone an act of demolition since the Hindu outfits then would have been legally entitled to do what they wish, with the land over which they had been given legal rights. And if it had not done so, then it means that the demolition has

affected their verdict, that is, that the legal outcome of a property dispute has been affected by an act of illegal demolition: the Hindu outfits have benefited from their illegal action of demolishing a 500-year-old mosque. The fact that the high court verdict has been taken in a calm manner by the people of the country is gratifying. It is symptomatic of the maturity of the people and also of the fact that communal issues are being pushed into the background as more basic issues of material life claim people's attention. In this context, many have welcomed the Allahabad High Court judgment as putting an end to the longstanding controversy so that the country can move on. They feel that keeping the issue alive by going to the Supreme Court should be avoided, and are therefore unhappy with criticisms of the high court judgment.

This position is understandable; but it is erroneous for two reasons. First, any retreat to pre-modernity of the sort that the verdict has displayed is fraught with serious consequences that go beyond the specific issue under consideration, that is, the Ram Janmabhoomi-Babri Masjid issue. If "fact" and "faith" are not distinguished, if adjudication is influenced by the relative bargaining strengths of the protagonists, and if a patently unlawful act brings legal dividends to those who perpetrated it, then it augurs ill for democracy in the country.

Secondly, issues like this leave behind wounds that fester and can cause damage later, even if there is no immediate cause for concern. Justice needs to be done, in a manner that is in conformity with the blindness of the maiden. That is the only firm basis on which a modern State can be built; and the resolution of even specific issues like this lies ultimately in the building of such a modern State. Hopefully, the Supreme Court to which the matter will be referred will be mindful of the pitfalls of quick fixes and will uphold scrupulously the cause of law.

### **A Blow to the Spirit of Modern India\***

On the eve of the Allahabad High Court verdict on Ayodhya, we had said the verdict would be a "test case for India's secularism, democracy

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\* Dipankar Bhattacharya, *Countercurrents.org*, 3 October 2010

and justice.” Now, following a close look at the shocking verdict, we must say it has failed this test on every count. 30 September 2010 will now be bracketed with 6 December 1992. Eighteen years after the dastardly physical demolition of the Babri Masjid, we have now seen its judicial demolition, a verdict that flies in the face of the basic principles of justice and rule of law, and challenges the fundamental spirit of a secular, democratic modern India.

The High Court was supposed to decide on the title suit regarding the disputed site. It is well known that the BJP and its Sangh siblings were all along wary of the court deciding on this case on the plea that the whole issue concerned “faith” and there could be no adjudication over “faith”. It was clear to them that they had no legal basis for their claim and hence they chose the way of cheating the country. They assured everybody that the law of the land would be honoured, and then betrayed their own words to demolish the mosque through a communal-fascistic mobilisation in broad daylight.

Today, the Sangh is jubilant that the High Court has turned “faith” into law. All the three judges have accepted the fact that the idols of Ram, Sita and Bharat were smuggled in from outside on the intervening night of 22-23 December 1949. Yet the judges have ruled by 2-1 majority that the “disputed structure” was not a mosque because it was apparently constructed by demolishing a Hindu religious structure and hence according to the tenets of Islam, it could not have the sanctity of a mosque! The other judge has of course differed on both counts—but the majority view prevailed.

The verdict is based heavily on two factors—the so-called ‘archaeological evidence’ marshalled by the ASI in its 2003 report that there was a Hindu temple on the site before the mosque was built, and the ‘faith’ held by many Hindus that the disputed area is the birthplace of Lord Ram. The ASI report has been widely questioned and rejected by a whole range of historians and archaeologists, and can at best be treated as a piece of speculative conjecture based on dubious evidence and questionable interpretation. The other aspect, ‘faith’, is just that—faith, which can by no means be treated as an evidence to decide a title suit.

By treating Ram as a juristic entity (albeit a minor) represented by his self-appointed 'guardian' in a title suit, the Allahabad High Court has set up a dangerous precedent of mixing blind faith and prejudice, masquerading as religion, with jurisprudence. It should be noted that the youngest litigant in this case, Ram Lalla Virajman, which has been awarded one-third of the disputed site including the all important central dome, claimed by the Sangh brigade as the exact birthplace of Lord Ram, was set up in 1989 by none other than a former judge of the Allahabad High Court, Shri Deoki Nandan Agarwal, who played a key role in making a 'legal' case out of the Mandir campaign of the Sangh brigade.

Having conceded the Ramjanambhoomi claim on thoroughly questionable grounds, the judges sought to give the whole thing the appearance of a reconciliatory measure whereby the disputed land would be apportioned into three equal parts with one part going to the Waqf Board. Reconciliation can only be attempted and achieved on the basis of truth and justice. In this case, both truth (at least recorded historical truth) and justice have been sacrificed at the altar of this phoney reconciliation formula and hence it is a compound travesty of all three. Can there ever be a dignified compromise by compromising truth and justice?

After Gujarat genocide, the BJP had been steadily losing ground in most parts of the country. Ever since its debacle in the 2009 Lok Sabha election—its second successive defeat in five years, the party seemed virtually clueless as to how to arrest its continuing state of demoralisation and desperation. Now the Allahabad High Court verdict has breathed some fresh life into the demoralised and desperate saffron camp. Advani has already described the verdict as heralding a new chapter in the country's history of national integration. In all likelihood, an emboldened BJP will now try and reopen the whole gamut of its 'suspended agenda' and refuel its Hindutva campaign.

The judicial trajectory of the case will now reach the Supreme Court. It remains to be seen if and how far the Supreme Court can salvage the spirit of law and justice and heal the post-Ayodhya wound on the body polity and the composite culture of the country that has only been rendered deeper and more acute by the Allahabad High

Court verdict. Every effort must be made to make sure that the glorious tradition of India's composite culture and the secular democratic vision of modern India prevail over the Sangh brigade's conspiracy to redefine India on retrograde majoritarian lines. If the possibility of an out-of-court settlement has to be explored even at this stage, it must not be at the cost of the basic principle of reason and justice.

India must and shall move on, and precisely for this purpose the forces of unreason and obscurantism need to be pushed back. There can be no compromise with the crude champions of the 'might is right' argument who are desperate to silence the voices of reason and progress by all means.

### **Commit the Crime and be Rewarded\***

The nation heaved a sigh of relief following the three judges delivering the verdict on Ayodhya case. There was no violence anywhere, something which was feared very much. The day passed off peacefully and the fear that violence will engulf parts of the country proved to be wrong, thanks to the maturity shown by large sections of population. As such the judgment was an exercise of sorts trying to do a balancing act, between all the parties involved, Ram Lalla Virajman, Nirmohi Akhada and Sunni Wakf Board. The title of the land has been divided into three each sharing one part. Also court has declared since Hindus believe the 'birth place' of Lord Ram to be below the place where the central dome of the mosque stood, that place should be allotted to Hindus. In response RSS chief in a jubilant mood proclaimed that now the path for a grand Ram temple has been opened at the site and all the parties should cooperate in this "national" work.

As Mulayam Singh Yadav has correctly put it, the Muslim community is feeling betrayed. First their mosque is entered into by miscreants who install the Ram Lalla idols there. Then in a well orchestrated assault, RSS combine demolishes the Mosque and now the court operates on the RSS theory that Lord Ram was born at that spot. It seems if

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\* Ram Puniyani, TwoCircles.net, 2 October 2010

matters go the way they are going there is no need for scientific disciplines of History, Archeology and others as a section of political force can gradually build up the faith, act upon that and then the court will legitimize the criminal acts in the name of faith of a section of society. The law of the land will come to such a pass is beyond the imagination of those who wish to adhere to the values of freedom movement and the Constitution of India.

Just to recall RSS combine, more popularly known as Sangh Parivar, picked up the issue of Ram Temple in Ayodhya in the decade of 1980s and later orchestrated the faith of a section of Hindus that Lord Ram was born precisely at the spot where the mosque is located. Interestingly, the trend of Lord Ram being regarded as the core deity of Hindu religion came up in the medieval times, more particularly after Goswami Tulsi Das wrote the story of Lord Ram in the popular Awadhi language. Till that time Valmiki's Sanskrit Ramayana was the major one prevalent in the society and being the language of elite, worship of Lord Ram was restricted to a section of Hindus. Tulsidas was pulled up by the Brahmins for his writing the story of Ram in Lok Bhasha, Avadhi, as Brahmins were supposed to be using Dev Bhasha; Sanskrit only. Tulsi Das was around thirty years old when it is claimed that the Ram Temple was demolished. The demolition claim is unlikely to be true as had such a demolition taken place, Tulsidas must have mentioned this in his writings. As such the later interpretations of Ram have been so different for different people.

One understands that Kings had been ruling for the sake of power and wealth and victor kings many a times destroyed the defeated king's holy place to humiliate the defeated king. The British introduced communal historiography aiming to pursue the policy of 'divide and rule' propagated that Muslim Kings destroyed Hindu temples to insult Hindu religion. This type of Historiography spread hatred amongst communities and became the foundation on which the communal violence started taking place in due course. As such Babri Mosque was a protected monument, under the custody of Government of India. Government failed to get the illegally installed Ram Lalla idols removed

from the site and also failed to protect the mosque from the onslaught of RSS combines' attack on the mosque in 1992. So de facto, with this judgment the RSS agenda of dividing the nation along communal lines is being legitimized by ignoring the fact of installation of idols and by turning a blind eye to the Babri demolition, coordinated by different wings of RSS combine. The crimes done by this stream have been richly rewarded by this verdict!

Now RSS and its progeny is taking the line that Muslims should hand over the land of their share to RSS front, to see that the aspirations of 'Nation' are fulfilled and a grand Ram Temple is built there. It is not the Hindus only who constitute the nation. All the Hindus of the nation do not hold any such belief about the birth place of Lord Ram. All the Hindus do not want a Ram Temple there. As such a majority of Hindus have kept aloof from this issue, many of them have looked with horror and disbelief at the way the faith of people has been manipulated to catapult BJP to the seat of political power. Since the issue was highlighted and brought to the electoral arena; Hindu majority have never voted for the agenda of Ram temple. No doubt a section of Hindus has been won over to the Ram temple agenda; the majority of Hindus have not approved it as the results of elections show. The latest surveys also confirm that it is not an issue for most of the Hindus, but is an issue only for a handful of Hindus. Moreover the younger generation does not have anything to do with these types of identity related issues and that too imposed upon the nation through criminal means, the crime of installing Ram Lalla idols and the crime of demolishing the Babri Mosque.

Congress is calling for a negotiated settlement. What can be a negotiated settlement? One; it has to be based on justice, recognizing the due rights of each party involved and there has to be a spirit of give and take. Do those calling for compromise will promise that the matters related to equity and security of Muslim community be granted? The Muslim community has been sliding down on the scales of social and economic indices. Will Sachar Committee- Rangnath Misra Committee reports be implemented in right earnest? Will RSS support such a

'give'? Will Muslim community be able to live in security hereafter? India has 13.4% of Muslims in the population. In the communal violence, more than 80% of victims are Muslims! Will RSS withdraw the 'hate spreading books' from its Shishu Mandirs? Will its Shakhas stop the 'hate propaganda' against the minorities?

For a moment one feels like supporting a compromise formula. Sure, and that's a good thing. One may be willing to talk of give and take, negotiation if the battered Muslim minority and also Christians are promised equal status as citizens, the baseless propaganda against them is held back, and the Congress takes it upon itself to fulfill the promise of Manmohan Singh that Muslim minorities have the first right to development resources as they have been left behind due to the social-economic discrimination and due to the politically motivated violence against them. Will all the guilty of communal violence be punished? Those behind Delhi anti-Sikh massacre, Mumbai violence and Gujarat violence are roaming with their bloated chests; can they be brought to book before a negotiated settlement is talked about? In a way can we trust the state for abiding by the rule of law to protect its citizens before demands of sacrifice from them are articulated?

One can very well say that the very politics of Communalism is using Ram Temple issue to violate the Indian Constitution and the amity amongst the communities. One can appeal to the minority communities to make some sacrifices but one knows that they will get nothing in return. The way communalism has seeped into the very vitals of our society and polity it has created situations where minorities are being treated as 'second class citizens'. The dominating 'Religion based nationalism', the politics of Hindutva with the agenda of Hindu Rashtra, will not let them live in peace and dignity. For RSS combine the matters of bread butter and shelter are secondary and imaginary constructs culled out from mythology form the base of their identity politics, the politics of Ram Temple, Ram Setu, and cow slaughter ban. We are in a catch 22 situation. The communalization of polity and society is so much that now faith, systematically constructed by a section of political stream is becoming the basis of law.

One hopes the younger generation, and all those believing in the Indian Constitution will try to move on from the identity politics, politics which abuses faith for short cuts to power and paves the way for a sane society concerned about the human justice, and affirmative action for weaker sections of society.

### **The India Verdict\***

P Chidambaram says the media is over-analysing the Ayodhya judgment. He is right for the simple reason that this is not the last court verdict on this issue. Since this will certainly go up to the Supreme Court, this one is a bit like a semi-final match that ends in a draw but where both contestants enter the final. That is why assessing this judgment is still an academic exercise. More relevant, and interesting, therefore, is the popular and political response to it and what they say about our evolution as a constitutional state and a secular, liberal, syncretic society and culture.

As investment bankers tell you, a good deal is the one that leaves both sides a little bit dissatisfied. That is the case here. Both sides find the judgment below their expectations, the Muslims more than the Hindus. Yet all the criticism and questioning has been tempered with a maturity that surprised all of us, and the world. There were no motives imputed to the judiciary, nobody said it was fixed by the government, and nobody said he had lost his faith in the system. Of course, the angriest of all were the “ultra-secularists” of the intelligentsia. But they also criticised the court for giving a “panchayati” solution rather than a judicial verdict and expected the Supreme Court to “rectify” it. Nobody said it was fixed, nobody said the judicial approach was not going to work, and the fact that this class that came up with the most articulate criticism of the judgment seemed overwhelmingly inclined towards the Muslim argument, in spite of having been (at least) born Hindu, spoke well for our society and the system.

So here is my first takeaway from this 30 September. When all else fails, politics, social dialogue, intellectual and philosophical argu-

\* Shekhar Gupta, *The Indian Express*, 2 October 2010

ment lean on the system of institutions. But for that you have to build great institutions and also tolerate what you might sometimes see as their excesses.

This is because it is the institutions that serve as both parent-cum-guardians as well as pressure valves of a democracy. Institutions that are seen as impartial, credible and fair protect us and our rights from the whims of the executive, vagaries of our politics and, most importantly, the tyranny of brute majorities.

The second takeaway has to be the pragmatism and wisdom of our politics. So far, no political party has tried to exploit the verdict for partisan purposes. The Congress, you can see, is a little lost. Its government is simply relieved that the judgment has been accepted with unprecedented calm and equanimity so far. The party itself, having built its post-2002 politics (following the Gujarat riots) on aggressive, almost Nehruvian secularism, where the BJP was evil and its leadership vermin, if not worse, finds that a compromise such as this might help the larger common good rather than any grand turnaround to undo the injustice of 1992. That, in fact, will be and should be achieved by pursuing the criminal cases arising from the Babri Masjid destruction more vigorously. This judgment has in fact created space for just that, by distancing a criminal act from a purely civil property dispute. So the Congress needs to study the consequences and fine-tune its electoral politics accordingly. That is why the Congress response has been so measured, avoiding the easy temptation of lunging for the minority vote banks. This is in spite of the fact that in Bihar now, in Assam next year and, most importantly, in Uttar Pradesh in 2012, it will need to win back that Muslim vote that it lost between 1989 (*shilanyas* under Rajiv Gandhi) and 1992 (Babri destruction, under Narasimha Rao).

Our politicians are the shrewdest Indians and it could well be that they are seeing a socio-political change that many of us have been anticipating and wishing for. It is simplistic to say India has moved on. But moved on from when to where? It can only be if the nature of vote-bank politics is changing fundamentally. Without that, India could not have moved on. Probably that is the change the Congress leadership

has sensed, and the BJP even more so. What else would explain their surprisingly muted and mature response to what many of their supporters would have seen as a victory, even if a narrow one on points. L.K. Advani spoke to my colleague, Indian Express, Senior Editor, Vandita Mishra, expressing satisfaction with the court order but underlining that it did not justify the Babri demolition. Now, if you are a student of contemporary politics, think hard. This is a clearer denunciation and disowning of the crime of 1992 by a top BJP leader than you have heard of the Emergency of 1975 by a top Congress leader. There have been "regrets" expressed, but only about its "excesses". Advani had told Vandita and Saubhik Chakrabarti (*Eye*, 19 September) that had he known the consequences that followed in either case, he would not have gone to Ayodhya while he would certainly have visited Pakistan.

Advani and his partymen have not discovered a new liberal approach to politics. Just like the Congress, they have also figured that India's politics has changed. That the insecurities, bitterness and frustration of the 90s that made Hindutva a propellant in their rise to power, are no longer there. This new India would only buy a new, improved political product. You want evidence: the only political criticism of the judgment has come from Mulayam and Lalu who now sit on the sidelines of power politics, having seen one of the two letters in their MY (Muslim-Yadav) vote banks move away.

Early on in the journalism school we are taught the golden three-example rule. So here is my third takeaway. I stuck my neck out to hail the 2009 election result as conclusive evidence that India's rotten politics of grievance was now yielding to the new politics of aspiration. Let me take a risk again to say two more things. One, that the Congress and the BJP have both seen and embraced this shift and are now recrafting their political response to this new, aspirational electorate. Mayawati's studied and clinical equidistance and steely administrative control over law and order tells you that she has also understood the change. But three of the biggest, though localised, beneficiaries of the politics of grievance and fear, Mulayam, Lalu and the Shiv Sena, are in denial of this welcome change, and are, therefore, looking down the barrel, electorally.

**Postscript:** The question everybody is asking is, can a mosque and a temple coexist? India is full of such places. My favourite is Kanchipuram, where the mutt of the Shankaracharya has a sizeable mosque next to it. What makes this spot so unique is that right across the street, sternly overlooking the mutt and the mosque, sits a bust of Periyar, the great atheist, iconoclast and the founder of the Dravida movement. An inscription under it reads:

There is no God,  
There is no God,  
There is no God at all,  
The inventor of God is a fool,  
The propagator of God is a scoundrel,  
The worshipper of God is a barbarian.

So if you believe in Bhagwan, you go to Shankaracharya; if you have faith in Allah, you go to the mosque; and if you do not believe in any god at all, just turn around and bow to Periyar.

Nobody would take any offence any which way.

### **A Battle for the Idea of India\***

The Babri Masjid dispute was never a clash between the Hindus and Muslims. It was between Hindutva and Secularist visions of India. With the recent judgement, the movement which fostered hate and fear seems to have triumphed.

On a winter morning in 1992, a frenzied mob of young men assaulted and triumphantly razed the three domes of a medieval mosque. I wept then, as did large numbers of my countrymen and women. Eighteen years later, the three judges of the Special Full Bench of the Allahabad High Court, hearing a 60-year-old title suit over this bitterly contested property, could have corrected these immense wrongs, and restored to Indian public life principles of justice, secular democracy and rationality. But they have failed us comprehensively.

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\* Harsh Mander, *The Hindu*, 10 October, 2010

Today once again I feel dismayed and betrayed. And again I am not alone.

The campaign demanding that a grand Ram Temple should be built on the site in Ayodhya where the Babri Masjid stood is often understood to be a clash between the Hindus and Muslims. There is indeed no such clash, and there never has been. It has always been a dispute between two alternate visions of India; between Hindutva and secularism; between a minority of persons unreconciled to the secular democratic idea of India, and the majority of Indians of every faith who believe in and live this idea.

The vision of India developed during the freedom struggle led by Mahatma Gandhi was of a free country which would be a safe, tolerant and egalitarian home to people of every major religion in the world. It would be respectful of people's right to their religious convictions, and to propagate their beliefs. But the State and all its institutions would not have any religion; instead the State would be fair and just to persons regardless of their religious beliefs. The majority of Indians, of all creeds, have remained faithful to this idea of India in the six decades of freedom. This is reflected in the ways they vote, and in the secular democratic Constitution that the people of India gave to themselves.

### **Interrogating the Constitution**

But organisations and political parties which were opposed to this vision invented a powerful symbol with their campaign to build a temple at the site of the mosque in Ayodhya. This was a battle for the idea of India itself. It prised open again the question about the terms on which people of minority faiths would have to relate to cultural domination of the religious Hindu majority. It interrogated the guarantees of the Indian Constitution, which pledged equal rights and equal protection to all persons, regardless of their religious persuasion.

The disputed claim of Hindus to the land on which the mosque stood is based starkly on two acts—one of stealth and the other of naked aggression—and on the alleged 'faith' of the majority. For 500 years, Muslim people had worshipped routinely in the Babri Mosque, built

in 1528 by Mir Baqi, general of Mughal emperor Babar. Hindus worshipped at the Ram Chabootra in the open area adjacent to the mosque, in a spirit of mutual communal goodwill. In 1949, overnight, statues of the deity Ram were placed surreptitiously in the mosque under its central dome. A furious Nehru directed the District Magistrate Nayyar and Chief Minister G B Pant to have these removed, but they desisted. (Nayyar significantly later resigned from the ICS and became an MP of the Jan Sangh, predecessor to the BJP).

It was then that Hindus began to worship for the first time within the mosque, and Muslims stopped prayers because of court directions. Civil suits were filed, the gates locked, but Hindu worship continued (in contravention of court orders). In 1988, Hindutva organisations led by the RSS organised the largest mass campaign in post-Independence India. 200,000 bricks from around villages and towns country-wide were consecrated and transported, for building a grand temple exactly where the mosque stood. They claimed that the mosque stood at the precise site where Ram was born, and that Emperor Babar had destroyed a Ram Temple to build a mosque there. 'National honour' required the demolition of the mosque, to correct this historical affront.

### **Poisoning relationships**

I was serving in districts in Madhya Pradesh at that time, and witnessed first-hand the sudden and precipitous decline in communal relations that this movement accomplished, by capturing the popular Hindu imagination with hate for the 'other', 'foreign', 'aggressive' community of Muslims, symbolised in the mosque. Each procession of bricks was charged with aggressive slogans of hate and the display of naked weapons. BJP leader L K Advani journeyed on a Rath Yatra across India. Fear and rioting followed in the trail of both the bricks and Advani's Yatra. For 15 years, India was transformed into a country divided by hate on religious grounds. The movement climaxed in the demolition of the mosque in 1992 by a rampaging mob, applauded by leaders of the BJP who were swept to power in state and Central governments; and in gruesome communal blood-letting, including in Mumbai and Gujarat.

Eighteen years after the demolition, the Allahabad High Court has

concluded that the mosque was indeed located at the site of Ram's birth, and that the mosque was built at the site of a temple which preceded it. Justice Agarwal ruled that the 'area covered under the central dome of the disputed structure is the birthplace of Lord Rama as per the faith and belief of Hindus'. Justice Sharma was even more categorical that 'the disputed site is the birthplace of Lord Ram'.

It is utterly extraordinary that the Court passed judgement not on the basis of material fact and evidence, but on questionable belief of faith. What is more, even this 'belief' is not held universally by all Hindus. In Ayodhya itself, there are hundreds of temples which claim to be the place where Ram was born. Tulsidas, author of Ramcharit Manas, was an adult at the time when the Babri Mosque was built, and he never mentioned that this was the site at which Ram was born. The 'faith and belief' referred to by the judges is not of Hindus but of Hindutva organisations that subscribe to an alternate political ideology of a theological Hindu India, that contravenes the Indian Constitution.

The judges rely on questionable archaeological evidence collected when the BJP was in power in 2003, and contradicted by most independent historians, to conclude that the mosque was built at the site of a temple. But the issue of whether a temple existed in ancient times at the site was irrelevant while adjudicating a title suit according to modern law, and not medieval sentiment.

### **Sense of Injustice**

I am amazed by commentators who endorse the judgement as balanced and just. They recommend 'moving on', failing to acknowledge that closure is impossible until justice is seen to be done. It is true that this case was not fixing criminal liability, but its rulings endorse ideologically all the major premises of the Ram Temple movement. On grounds of dubious history and 'faith', and adverse possession derived by deceit and aggression, the judges awarded the title of the land under the central dome of the demolished mosque to Hindus to construct a Ram temple. The war cry of the movement for the Ram Temple was 'Mandir wahin banayenge' ('We will build the temple at that very spot'.) With this judgement, a movement which challenged

India's secular Constitution and took hundreds of lives, and fostered fear and hate, has triumphed.

I believe we have lost this battle, but will not—cannot—lose the war. I celebrate that young people who were not yet born, or were children when this movement was at its peak, today refuse to be mobilised in medieval hate campaigns. But it is not enough for them to be apolitical. There is too much at stake. They must ask again—and answer—the questions with which those who fought for our freedom grappled. Is this to be equally a nation for all? Or are some destined to become and remain children of a lesser God?

### **A Secular Rethink\***

We should be examining the ways in which we can foster a truly plural and vibrantly secular culture in India...

Various kinds of grievances have been dismissed by us, proponents of communal harmony, as imaginary or irrelevant.

#### **India under attack: 6 December 1992**

The judgment on the Ayodhya dispute lends renewed urgency to a critical, life-or-death, question that has been hanging precariously in mid-air for decades.

What would it take to build a truly dynamic plural and secular culture in 21st century India?

If we take the Shah Bano case and the village-to-village collection of Ram-shilas, in the late 1980s, as watershed events in the journey of independent India, it feels as though 20 years have gone by in just fire-fighting struggles to contain the inferno of communal discords.

#### **Constructive endeavour**

Some of us who have been activists for communal harmony have gradually grown tired of working in reaction to disturbing events. Rather than asking how to fight communalism it seems much more constructive to ask ourselves—in an open, relaxed and self-critical manner—what can we do to build the immune system of Indian society? What will render

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\* Rajni Bakshi, *The Hindu*, 10 October 2010

us less vulnerable to identity-based prejudices, tensions and violence?

When Citizens for Peace (CfP), a Mumbai-based group, initiated such an endeavour five years ago, we began by acknowledging both the authenticity and diversity of grouses against the actual practice of 'secularism'. The next step was to establish non-negotiable parameters for an exploration which, as a creative challenge, we dubbed "A Secular Rethink".

The first and obvious core value is unconditional respect for right to life and right to dignity of every human being—as enshrined in the fundamental rights of India's Constitution and the United Nations Charter on Human Rights. It follows that all communities must at all times be equal before the law. Thus, *Dharam Nirpekshta* pertains essentially to the State—that it be identity-neutral and not be aligned with any faiths or ethnic group. However, equality before the law is the bare minimum pre-requisite for a stable, plural and just society. Fulfilling these aspirations requires a deep introspection on a regular basis. But this is only possible if we resist sticking labels like 'communal' and 'secular' on each other. Doing this rigorously means that we will have to jettison facile assumptions about the motivations and aspirations of the 'other'.

For instance, is it fair to denounce every Hindu who favours a temple at the disputed site in Ayodhya as being anti-Muslim? Or is it fair to decry every Muslim who wants a mosque rebuilt on that site as a fundamentalist?

Just as *dharam nirpekshta* is a duty of the State to all its citizens, *sarva dharma sambhava* is the responsibility which accompanies that right. At its bare minimum this means, not tolerance of 'others' but, mutual acceptance of differences. For the longest time the anti-communal discourse has rested two somewhat fragile grounds. One was to foster images of love and friendship across identity barriers. Granted, such bonhomie has a natural allure. But fostering a vibrantly secular public culture need not depend on 'lovability'.

So what if you don't particularly like your neighbour who belongs to an 'other' community? Why should that interfere with finding mutually acceptable ways to co-habit social, economic and other public spaces

without conflict and dissonance? Thus, Cfp's motto—"Respect for All". The second was a sometimes subtle tendency to think that if people simply don't have religious or caste identities, life and society would be better. This underlying assumption has often gotten in the way of finding more effective ways to both acknowledge and process the angst that members of different communities feel towards each other.

Instead, various kinds of grievances have been dismissed by us, proponents of communal harmony, as imaginary or irrelevant. This has been particularly true for those who regard themselves as ethnic-identity-free modernists. Inadvertently, this left the field free for entrenched ideological interests to twist the sources of angst to fuel a politics of dissension and hatred. What we need instead is to foster mechanisms for healthy and constructive airing of dissensions—at the community level, in workplaces, in the media—in order to naturally isolate the extremist and fundamentalist elements of all groups. This would encourage more and more people to reject all forms of extremism—rather than making excuses for the extremists of their faith and demonising those of 'other' faiths.

However, it is vital to note that this discourse is no longer limited to religious tensions. The challenge of fostering a dynamic plural and secular public culture extends to the whole spectrum of identity-based divisions defined by language, regional affiliation, caste.

Perhaps the most challenging bit of rethinking falls upon us, various hues of progressives, who have willy-nilly longed for identity-based groupings to wither away. What we actually seek is indeed most precious—namely a values-based ethical coherence as the basis of nationhood and co-existence in a civilised society.

### **Value of Identity**

But such coherence need not depend upon rubbing out differences in identity. It might instead flourish if there are healthier ways in public spaces for us to meet both as citizens who also locate ourselves in a complex web of intersecting group identities. Much of this work is already on the ground not only in the realm of NGOs but in sections of the business world. Cfp's work with leading corporate houses in

crafting a voluntary code on Business for Peace has shown how rigorously this striving is being pursued by some companies. The workplaces of companies such as Mahindra & Mahindra, Infosys, Thermax, Tatas and many others are incubating a social milieu in which people from different castes and religions can work as equals.

Given the horrendous realities of identity-based violence and brutality, these may seem like fragile trends driven by an idealistic minority. But, as the media build-up to the Ayodhya judgement and subsequent coverage has shown, more and more young people have no patience with disputes based on religious or caste identity. Whatever their views about the term “secularism”, most people respond warmly to the value of ‘equal respect for all’—which is Cfp’s motto. As the Ayodhya judgement is analysed from many different perspectives, it becomes clear that the dispute is not fully behind us. But one sure way of ensuring that it does not reignite a conflagration is to pro-actively focus on the longing for public culture of respect for all. Our future may depend on treating this striving not as a challenge or burden—but as an exciting project drawing on our most creative energies.

### **Judgment tests the idea of India\***

The verdict in the Ayodhya case has undoubtedly been positive on one count, but its larger consequences remain disturbing for a law governed state. That a court and appeals to higher judicial authority be the mode of conflict resolution is however welcome.

It would be difficult for an Indian born since, or coming of age after December 1992, to comprehend the extent to which the issue of Ayodhya raised tempers to fever pitch at the time. From the late 1980s onwards, it became not an issue of a disputed site as much as a marker of what one thought India did or did not stand for. In its long history, the movement to consolidate and solidify a sense of Hindutva had never found a symbol quite as powerful.

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\* Mahesh Rangarajan, *Mail Today*, 11 October 2010

## History

This insurgent movement, for that is what it was, harnessed with success first by the Vishwa Hindu Parishad at a time when under Vajpayee's leadership, the new born BJP had steered clear of such rhetoric. Once the party was reduced to a tiny entity with just two elected members in the Lok Sabha, the time was right for a change of gear.

But it was after the Palampur resolution that the Ram temple, in Advani's words became 'electoral mascot' of the party. His *rath yatra* launched in October 1990 from Somnath may have been halted at Samastipur where he was arrested, but it was completed in December 1992. Ayodhya was more than a route to power in Lucknow and New Delhi. It was evidence of how the markets of politics would be changed, the idea of India redefined.

There were three key milestones in this process. The opening of the locks in February 1986 reversed a decision taken by the first government of independent India. No one should forget that the aftermath of the murder of the Mahatma by Independent India's first political assassin, Nehru and Patel deployed the full force of the government against militant groups. The idea behind locking the shrine in Ayodhya was to freeze the dispute and let India move on.

Note that this decision was by a government that included other stalwarts—B R Ambedkar and Shyama Prasad Mukherjee. The Ram issue was not taken up by any major political party till the BJP resolution in Palampur. It was pre-eminently a local dispute that had been taken off the political map by an alert administration. In February 1986, the district magistrate assured the judge that 'heavens will not fall' if the locks are opened. It is commonplace today to run down the early Indian leadership in general and Nehru in particular but in hindsight both he and his Home Minister Sardar Patel showed more courage than latter day leaders.

But it was hell that broke loose in a fresh wave of riots. Not content, the Congress government and the VHP made a deal to allow a *shilanyas* (foundation stone laying ceremony) in November 1989. Veteran Congressman and scholar of the scripture, Kamalapati Tripathi warned against

the deal. But the congress launched its poll campaign from Ayodhya.

The denouement was in the 1992 destruction of the Babri Masjid. Union Home Minister P Chidambaram is right to warn that the September 2010 judgement does not mean that the accused in that case have been cleared. Vandalism cannot go unpunished in a democracy. But equally seriously, those who gave a solemn written assurance to the Supreme Court on the safety of the site committed contempt of court. the issue has not died or gone away.

### Faith

Yet, there is disconcerting fallout of the recent judgement. By according faith a place in the adjudication of what was a title suit, it has set a serious precedent.

The verdict has been received with calm, maturity and sense should not blind anyone to what this implies. faith has never been denied or suppressed in Republican India, but if it is to be the basis of a legal decision, it amounts to opening a veritable pandora's box. After all, the site in question was a place of faith for more than one group of citizens. This is not about the Sunni Waqf Board, the Nirmohi Akhara or Ram Lalla. It is about how a court or for that matter an organ of the state can or should decide on what happens when faiths collide. This is not a matter for a secular state to pronounce on.

The fact that the Ram temple movement has accepted the verdict for the most part is significant. This movement was built on the singular principle, "*ham mandir wahin banayenge*". We will build the temple on that very place. The impact of the judgement is to transform the insurgent consciousness of 1986-89 and the political logic of the *shilanyas* into a part of state ideology. It marks a serious marker but no one should have any doubts that this is a step away not only from pluralism but of legal frame based on reason. This is not because reason is hostile to faith. Far from that but it cannot be the basis of a decision, for this is a matter courts cannot decide.

More seriously, by taking on issues of archaeology and history, the precedent again can be an unwise and troubling one. There is little doubt that many medieval and early Indian places of worship had in-

volved desecration or destruction of other shrines. This is by no means unique to the Turks, Afghans or Mughals. the Cholas who were staunch Shaivites were known to have demolished Vaisnava shrines.

Can an India in 2010 afford to reopen such issues? It is difficult to answer in the affirmative unless one wants to relive the past as a nightmare. But this country was founded on a dream that a diverse society could hold together because it was so varied. Plasticine and not steel was the metaphor that could describe us best. Needless to add, there was a broad plural consensus. There were and are limits to what India will take. And none other than L.K. Advani knew this when he said then, and never ceases to say since, that the day of the demolition was the saddest in his life.

### **Constitution**

To conclude, the Supreme Court will have the final word on the title suit. But is important not to confuse ourselves what may be at stake. Silencing doubt or snuffing out reasoned argument in the name of unity cannot be a route in any democracy, least of all one as stable as India can afford.

After all, the major reason for the rallying around the temple movement was the sense of unease, fear and panic about the future. Its proponents claimed it would unify India when what it did was to link together local conflicts and passions more successfully than any one before or since. India has indeed moved on from that state of high fever. But decisions founded on faith as fact may do more to undo the idea of India than we may realise at first sight. This is a matter so vital that it will call for the highest wisdom not only of the Supreme Court, or the political leadership, but of any one who sees India as an entity founded on constitutional principles.

### **Let Us No Longer Bicker over Temples and Mosques\***

I believe Sikhs are an integrated part of the Hindu family of religions. So, being a Sikh, my bias in Hindu-Muslim conflicts should be in favour

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\* Khushwant Singh, *Hindustan Times*, 16 October 2010

of the Hindus. It is not so. Whenever such conflicts take place, my bias is on the side of 'the' Muslims. I learnt this from no less a person than Mahatma Gandhi.

Having said that, let me come to the Allahabad High Court's verdict on the Hindu-Muslim conflict over the small piece of land on which the Babri Masjid once stood. The mosque was knocked down on the pretext that it was built over the ruins of a destroyed Ram Mandir. We have to find answers to two questions: Was Shri Ram really born in Ayodhya? And was there a Ram Mandir which was pulled down during Babar's four-year rule?

There are other towns along the Ganga which claim to have Sitaji ki Rasoe (kitchen). However, a preponderant majority of Hindus believe that Ayodhya was his birthplace. There is no need to dispute that.

However, there are over a dozen versions of the Ramayana which differ in essential details. But how much do we know of Shri Rama? We celebrate his birth anniversaries with great fervour but no one knows the year he was born, nor the year he died. These are serious lacunae in our knowledge of the most revered figure in our history.

The more important issue is whether or not there was a Ram Mandir which was pulled down. The archeological evidence produced of its existence is flimsy and motivated. It has been rubbished by our top historians like Romilla Thapar (Hindu) and Irfan Habib (Muslim).

I suggest all those interested in the subject take a look at a small booklet entitled *Ayodhya: Archaeology after Demolition* by D. Mandal (Orient Longman). It is no more than 74 pages long and will take less than an hour to read. I quote a few sentences: "Archaeology has become implicated in the Ayodhya controversy. It has been claimed that archeological evidence provides irrefutable proof of the existence of Ram Temple at the site of the Babri Masjid and the destruction of this temple by Babar." The author uses standard archeological procedures to question the claim. He examines the structural and artifactual evidence and analyses the stratigraphic information of B B Lal's (then Head of the Archeological Department) of Excavation Exploratory, possible alternative interpretation of the available data.

He concludes, "There was no temple of stone or brick lying below the mosque, and that there is no evidence of any act of destruction."

You will have noticed that the judgment has been lauded by right-wing Hindu leaders—Mohan Bhagwat (head of the RSS), Bal Thackeray of the Shiv Sena, L K Advani, M M Joshi and Uma Bharati of the BJP, Vishwa Hindu Parishad and other like-minded. There has been much jubilation in their ranks because they believe it is a victory for Hindu fundamentalism. It has been received with dismay by Muslim organisations.

The case now goes to the Supreme Court. It should be heard soonest and the final verdict given to end the controversy once and for all.

### **The Secret Witness\***

Each time I read about Ayodhya, it reminds me of the terrifying experience that I went through during my first visit to the holy town in 1992. Armed with a letter of introduction from a member of the Delhi unit of the BJP, I had wormed my way into the ranks of the karsevaks at Ayodhya. Initially, I was put through intense grilling. Several times I had to recite an apocryphal tale of being a Kashmiri Hindu who had abandoned his studies in Kashmir because of militant activity. But after I was accepted as 'genuine', I saw at first hand the face of the religious drama that had remained veiled by political hoopla.

Somehow, I managed to stay in a tent near the disputed site. One early morning (a few days before the 6 December 6), I saw hundreds of people assembled near two grave sites. Soon, they started breaking the gravestones with iron rods, large boulders and sharp instruments. I, too, had to join them. People called it "*chhoti* (small) *karseva*".

Another grave was spotted, and this was also vandalised. The grave sites were levelled and water was sprinkled on the ground to make sure that no traces were left. The rubble was lifted and thrown into a nearby pond. Within an hour or so, two makeshift shops were set up at the site to sell tea. All this happened in the presence of an ex-BJP MP.

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\* Sanjay Kaw went undercover to Ayodhya to report for *The Statesman* in 1992

Some Bajrang Dal activists even wanted to build a small temple there. But they were prevented by others, who said it would give rise to another controversy and hamper the construction work of the Ram temple. The PAC or Provincial Armed Constabulary's interaction with the karsevaks was as cordial as that between the BJP and the RSS. As I moved through Ayodhya wearing soiled clothes, I met many PAC men. I was treated with respect, even deference. One night some karsevaks and I spent about four hours chatting with a group of PAC men. "Don't worry about us, we are solidly behind you," said one policeman. "If we are ordered on 6 December to attack you, we will lay down our arms and join you," reassured another. "We will force the paramilitary forces to surrender," chipped in a third cop.

It was from this group of policemen that I learnt that a PAC constable had been caught removing bricks from the disputed structure. He had removed 10 to 12 bricks when he was caught, a policeman told me.

One of the constables was very upset with the conduct of the CRPF. Some days before, CRPF men prevented an Uttar Pradesh constable from standing inside the disputed structure. The matter had to be sorted out by senior officials, the constable told me. The bonhomie between the karsevaks and the UP policemen was glaring. They bought us tea and, later, one of them invited us over for breakfast to their camp.

There were many karsevaks who were carrying arms with them. One boy showed me a flick knife and taught me how to use it. Also, some *sadhus* were carrying wireless sets with them. One sadhu told me he was keeping an eye on those who were moving suspiciously in and around the site. "We are also keeping an eye on journalists who are staying at the Shan-e-Awadh hotel," he said.

One person who was staying with me in the tent told me that all the arrangements had been made by the RSS. "Be it food or tents, everything has been organised by the RSS." He took me to a huge *bhojanalaya* for food.

The person serving us food said 1,00,000 people had already reached the site. He told us that a few more kitchens had been opened and godowns had been packed to meet any eventuality. The person

who took me to the *bhojanalaya* said, “We have even planned the *rann neeti* (war strategy). The UP police is supporting us and we are even sure of victory.”

Rhetoric apart, I witnessed an awesome organisational machinery managing the needs of tens of thousands of karsevaks: identity cards, meal coupons, tents, lights, feeding arrangements. The machinery wasn't, however, confined to merely boarding and lodging. The tools required for the final demolition were also being put together. Everyone knew that D-Day was nearing.

### **Politics, History, Religion and The Law\***

Reactions to the Allahabad High Court verdict in the Babri Masjid case have varied widely, from triumphalism from some actors, through appeals for calm and hopes of reconciliation from others, to expressions of disappointment and dismay from yet others. This is partly a consequence of the complex character of the split verdict. On the issue of whether a Hindu temple had been destroyed in order to build the Babri Masjid in 1528, S U Khan, in a minority opinion, said that it was built on the ruins of a temple, but nothing was destroyed, while Justice D V Sharma and Justice S Agarwal held that a Ram temple had been destroyed in order to build the mosque. On the issue of whether it was the Ram Janmabhoomi, Justice Sharma, in a minority judgment, ruled that the site was the birthplace of Lord Ram, and therefore the entire property should go to the Hindu litigants. The majority judgment of Justice Agarwal and Justice Khan stated that Hindus believed it was the birthplace of Ram, and divided the property three ways, giving one-third to the Sunni Waqf Board and two-thirds to Hindu litigants. The status quo was to be maintained for three months, during which the parties were free to appeal the judgment in the Supreme Court (Allahabad High Court 2010).

It is entirely possible that the majority judgment was framed in the fear that giving outright possession to either Hindu or Muslim parties to

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\* Rohini Hensman, *Countercurrents.org*, 10 October 2010

the dispute could result in riots and bloodshed, while division of the property could lead to reconciliation. But good intentions alone cannot ensure a good judgment. For example, one of the Hindu litigants, to whom the area under the dome of the mosque was awarded, was Ram Lalla (Baby Ram), whose statue had surreptitiously and illegally been placed there in the night of 22-23 December 1949, after which the mosque was kept locked. But the title suit of the Waqf Board was deemed to be barred by the Statute of Limitation, despite the fact that it filed a suit claiming the mosque in 1961, within the statutory period of twelve years. What could the legal rationale for either of these decisions possibly be?

### **History and the Law**

The Archaeological Survey of India (ASI) concluded that a temple had existed at the site of the Babri Masjid, but professional archaeologists like Shereen Ratnagar, who also gave evidence before the court, concluded that claims about the existence of a temple were not credible (Mandal and Ratnagar 2007). Other professional archeologists who were observers of the excavation, like Supriya Verma of Jawaharlal Nehru University and Jaya Menon of Aligarh Muslim University, also felt there were doubts about the credibility of the ASI report, while D N Jha, History Professor at Delhi University, alleged that the court had not taken the historical evidence into account (Jebaraj 2010). Even if a temple had existed at the site, was it demolished or had it fallen into ruin long before the mosque was constructed? On this point, even the judges of the Allahabad High Court did not agree. The lack of any documentary evidence of the destruction of a temple is striking. As Ram Puniyani (2010) points out, Goswami Tulsi Das, who wrote the story of Lord Ram in the popular Awadhi language, would have been around thirty years old when the mosque was built in 1528, and surely would have mentioned any demolition in his writings had it actually occurred.

It has to be conceded, at least, that the very existence of a temple at the Babri Masjid site, leave alone its demolition, is disputed by professional archaeologists and historians. As eminent historian Romila Thapar commented, 'Since this is a matter of professional expertise on which there was a sharp difference of opinion, the categorical acceptance

of one point of view, and that too in a simplistic manner, does little to build confidence in the verdict' (Thapar 2010). Are the judges, who are neither historians nor trained archaeologists, competent to adjudicate such an issue? Surely not. Nor should they be expected to, when the matter in court is the legal title to the land. And here, according to Justice Rajindar Sachar, since the site was a mosque for over 400 years, 'A suit for declaration by Hindus claiming that it was a temple is hopelessly barred by time and must fail' (Sachar 2002).

### **Religion and the Law**

The other main reason given for why two-thirds of the property, including the portion beneath the central dome of the Babri Masjid, was given to Hindu claimants was that Hindus believed it was the exact birthplace of Ram. Is it true that is the belief of Hindus in general? What about those Hindus who believe that Ram was born not in Ayodhya but in the village of Gharram near Patiala, in the palace of his maternal grandfather, since it was customary for a woman to return to her parental home to deliver her first child (ukpha.org)? What about Hindus like Swami Agnivesh, who in an interview said that he believed Ram was born in Ayodhya, but not on that particular spot? Indeed, there are other temples in Ayodhya that are claimed to be the birthplace of Ram. Furthermore, Swami Agnivesh added that he believed Ram was a man, not a God, and God is something quite different. Indeed, millions of Hindus believe that the 'Lord does not reside in temples, structures or forms of deities' (TheBigThinkg 2010). Was any survey done to ascertain how many Hindus actually believe that Ram was born in that exact spot, given that 'it is obvious to the meanest intelligence that it is impossible to prove that the birthplace of Lord Ram was under the masjid' (Sachar 2010), and that 'It is only the Sangh Parivar which initiated and propagated this notion for mobilization of Hindus for its political objective' (Teltumbde 2010)?

Clearly, being neither theologians nor sociologists of religion, the judges were not competent to decide whether the belief had any validity, nor whether it was shared by the majority of Hindus. In fact, the belief that Lord Ram was born on that particular spot under the central dome

of the Babri Masjid was promoted assiduously only by an extremist section of Hindus who sought to pursue their agenda by bloodshed and terror. To equate this section with all Hindus is as grotesque as equating the Taliban with all Muslims or the Ku Klux Klan with all Christians. In any case, should the judgment be based on faith and belief rather than the law? Those who uphold this principle on the grounds that 'discussion cannot simply wish away the forms of self-consciousness that have characterised Indian society' (Mehta 2010) should follow this argument to its logical conclusion: that untouchability, caste atrocities, sati, communal pogroms and the gruesome crimes incongruously referred to as 'honour killings' can all be legitimised in the name of not wishing away such 'forms of self-consciousness'.

However, it must be recognised that this is not the first time that a supposedly secular court has ruled on the basis of faith and belief. Indeed, this is inevitable given India's peculiar definition of secularism. Indian politicians have correctly rejected as undemocratic a definition which requires the prohibition of all expressions of religious faith, since that would violate freedom of conscience, expression and association. But they have adopted the equally untenable definition of secularism as '*sarva dharma samabhav*' (all religions are equal). The fatal flaw in this definition is its assumption that each religion is monolithic, whereas in reality there are irreconcilable contradictions within each religion: women's rights activists versus patriarchs and misogynists, social justice activists versus apologists for social inequality and oppression, non-violent pacifists versus those who justify cruelty and murder. What often happens is that it is the reactionary section that is seen to represent the whole community.

The year 1986 provides a graphic illustration of how this definition works in practice. That was the year in which the government opened the locks of the Babri Masjid and allowed Hindus to worship inside it in order to appease Hindu extremists. This provided sufficient fuel to the Ram temple movement for it to proceed to the demolition of the mosque in 1992, accompanied by the slaughter of thousands of Muslims. In the same year, following massive protests against the Shah Bano

judgment of 1985 by Muslim fundamentalists, the government passed the Muslim Women (Protection of Rights on Divorce) Act, which put Muslim women outside the purview of Section 125 of the Criminal Procedure Code. The most negative consequence was not the loss of the pathetic sum granted to Shah Bano by the court, but the insistence of the Muslim Personal Law Board and others that faith takes precedence over the law, and that Muslims shall not be equal before the law nor get equal protection of the law. Muslim voices against the bill, especially those of women, were drowned out and ignored. The parties that campaigned for this legislation cannot, therefore, protest against the Allahabad High Court's Ayodhya judgment with any degree of logic or consistency, since it has given them exactly what they demanded at that time.

This definition of secularism urgently needs to be replaced by one that defines it as non-discrimination between persons on the grounds of their religion, and a State that does not interfere in religious matters unless it becomes necessary to do so in order to protect the fundamental human and democratic rights of its citizens. In other words, people of all communities would be free to practice their own religion in their own way so long as they did not infringe on anyone's fundamental rights. Matters of faith would be excluded from the purview of the law, as it should be in a secular state. It should be clear that this definition of secularism, and the gender-just, secular family laws that would be part of it, would be perfectly compatible with liberal and progressive interpretations of all religions. Only those who espouse reactionary and extremist interpretations of their religion—for example, sexist, casteist or communal interpretations—would have problems with this definition.

### **Religious Extremism and Fascist Politics**

The Allahabad High Court rewarded the criminals who placed the Ram Lalla statue under the dome illegally in 1949 and destroyed the mosque in 1992 by giving them two-thirds of the property they had stolen, thus undermining the rule of law. But these were no ordinary, trivial thefts. They were the part and parcel of a larger agenda to annul India's democratic constitution and turn India into a Hindu Rashtra, by actors who made no secret of their admiration for Hitler and espe-

cially the way in which he had dealt with minorities. As such, it has to be seen in the context of the other landmarks on this journey, such as the assassination of Mahatma Gandhi in 1948, and periodic programs against Muslims and Christians reaching two peaks, one in 1992-93 at the culmination of L.K.Advani's bloodstained *Rath Yatra*, and the other in 2002 in Gujarat. What emerged after the genocidal violence in Gujarat—the laboratory of Hindutva—after 2002 is as important as the arson, gangrapes, and mass murder: the fascist transformation of the state and society, which is still evident in Gujarat today.

Beginning in the 21st century, a new Hindutva strategy emerged: carrying out terrorist attacks, often on Muslim targets, and then blaming innocent Muslims for them. These unfortunates were arrested and tortured, their families torn apart, their health, reputation and job prospects ruined, before they were finally released for lack of evidence. Moreover, the whole community came to be branded as 'terrorist': a truly ingenious and diabolical way of killing several birds with the same stone, so to speak. This was the modus operandi in the Thane, Vashi, Parbhani, Jalna, Purna, Malegaon, Modasa, Goa, Hyderabad, Ajmer, Samjhauta Express and possibly other terrorist attacks (Gatade 2010). One of the most disturbing findings in these cases is the extensive involvement or complicity of personnel in state institutions. While the rath-yatra-communal-pogrom strategy is an overt assault on secularism and democracy, this infiltration of the state apparatus and assault from within is arguably even more dangerous.

When the government finally took cognisance of this menace, there were howls of protest from the Sangh Parivar, including assertions that Hindus cannot be terrorists and terrorists have no religion. Both propositions are patently false. When Maharashtra Anti-Terrorist Squad Chief Hemant Karkare unearthed incontrovertible evidence that saffron-clad Sadhvi Pragya Singh Thakur and Swami Dayanand Pandey had played key roles in the Malegaon terrorist attack of 2008, he was proving precisely that Hindus could be terrorists (Sify News 2008). And a quick glance through history and around the world shows that adherents of any religion and none can become terrorists if their interpretation of

their own religion or political philosophy justifies such acts.

Building a Ram temple on the very spot where a mosque had been demolished carries a powerful symbolic value in this context, connoting the crushing of a minority community in order to establish the absolute dominance of Hindutva. The real issue is whether Muslims in India are equal before the law and have equal protection of the law as the constitution guarantees or not. The choice is not between masjid and mandir, but between democracy and Hindu Rashtra.

Justice Sharma's judgment can be seen as a full endorsement of the Hindutva agenda, but the majority judgment is more complex. Its intention, perhaps, was to appease the Hindu extremists and avert a repeat of the ghastly violence of 1992-93 by giving them two-thirds of the land, while simultaneously pacifying the Muslim litigants by giving them one-third of their property. But it is a dangerous mistake to think that extremists can be appeased by giving them what they want. The lesson to be learned from what happened between 1986 and 1992 is that appeasement only encouraged the Sangh Parivar to engage in more violence. There are already indications that the High Court verdict is having the same effect, with demands by the VHP that the entire plot should be given to the Ram Janmabhoomi Nyas so that they can build a grand Ram temple there (Parashar 2010). If this judgment were to be the final word on the subject, it is possible that the fuel it provides to the stalled Ram temple agenda could plunge the country into bloodshed again. It is therefore fortunate that appeals to the Supreme Court against it are being planned.

### **Religion and Politics: Towards a More Progressive Union?**

The Supreme Court judgment of 1994 stated that the demolition of the Babri Masjid was 'an act of "national shame"'. What was demolished was not merely an ancient structure, but the faith of the minorities in the sense of justice and fairplay of the majority. It shook their faith in the rule of law and constitutional processes' (Andhyarujina 2010). We therefore have reason to hope that the Supreme Court, unlike the Allahabad High Court, will restore faith in the rule of law and the Indian constitution. Restoration of the status quo ante prior to December 1949,

when Muslims worshipped in the masjid while Hindus worshipped in the outer courtyard, could perhaps serve the purposes of both justice and reconciliation.

It is not a foregone conclusion that a verdict in favour of the Sunni Waqf Board would have resulted in a bloodbath. Compared with the shameful complicity with Hindutva forces of the state government of UP and paralysis of the state government of Maharashtra and the Centre in 1992, there was far greater preparedness to quell any violence in 2010. Equally importantly, there is more opposition to the Hindutva agenda in civil society, partly as a result of the tireless efforts of anti-communal activists. For example, on 23 September a dharna was called in Bombay by the New Trade Union Initiative and others, and the speakers called on workers to organise in their workplaces and neighbourhoods in order to safeguard peace and communal harmony when the verdict was announced. There are also ongoing attempts to bring the perpetrators of the crimes of 1992 and 2002 to justice. Despite all this, however, there was palpable dread, especially among Muslims, during the build-up to the High Court verdict, and no one can guarantee freedom from communal violence in the future. What more can be done to ensure peace and communal harmony?

It is worth looking at the answer to this question provided by Lata Mani, a feminist socialist who is also a Hindu believer. In her book *Sacred Secular* (2009), she draws a clear line between fundamentalism or extremism of all types (including Hindutva) and genuine spiritual practice, characterising the former as 'centrifugal' and the latter as 'centripetal': 'Where the latter encourages the divinisation of humanness and the sacralisation of all activity, the former is explicitly concerned with self-aggrandisement, with fortifying the ego. It is no wonder then that greed, hate, violence and untruth abound in right-wing rhetoric and action while authentic spiritual qualities of love, compassion and dispassion are conspicuously absent' (p.12). She sees herself as part of the 'small, faith-based Hindu voice within and outside of the religious establishment which has sought to challenge the credibility and authenticity of Hindutva. Its strategy has been to unravel the lies of Hindutva

while stressing the essential teachings of love, peace, unity and *dharmic* living that are inherent in Hinduism as in all other wisdom traditions' (pp.125-126). There is an implied self-criticism in her admission that 'It is time for those who live and move in faith to be more outspoken in expressing faith-based anti-communal perspectives... For, as we have seen, the danger to Hinduism, if ever there was one, comes not from without but from within' (p.94).

However, she also criticises the Left in India for its understanding of secularism as the negation of religion, and an attitude to people of faith that is patronising at best, suspicious or hostile at worst. Such a view fails to understand that science cannot answer questions like: Why should I not kill and rob someone if I can get away with it? Why should I stand in solidarity with those who are oppressed? Nor does it acknowledge that both secular and religious ethical systems and moral philosophies (Kant's categorical imperative as much as the Buddha's precepts or Jesus's parable of the good Samaritan) are founded on principles that are outside the realm of science, yet equally valid. 'The Marxist premise that religion is a distortion of reality has led to a distorted view of religion,' she comments (p.21). 'The problem with the Swayamsevak Sangh, Vishwa Hindu Parishad and Bajrang Dal is not that they are religious. The problem with these organisations is that they are fascist. Religion is no more inherently conservative or fascist than secular philosophy is, by definition, liberatory. Many contemporary forms of organised violence and discrimination have a secular basis' (p.123).

Mani points out that 'Contemporary discussions all too often pose the secular and the spiritual as diametrically opposed perspectives with little in common, either in substance or objectives,' and questions 'this assumption by examining alongside one another the beliefs that ground progressive secular activism with those that shape the spiritual journey' (Mani 2009, 143-144). She notes, 'Equality, inclusivity, interdependence: all three are central to both progressive secular activism and centripetal spiritual philosophy... The spiritual idea that our true nature is expansive and loving parallels the secular notion of one's "humanity"' (pp.148, 150). In other words, 'the dividing line is not between

sacred and secular frameworks so much as between philosophies that seek to tear asunder and separate, versus those that seek to heal and unite' (p.144).

This analysis suggests a way forward for secular activism that avoids the appeasement of reactionaries inherent in the *sarva dharma samabhav* definition of secularism as well as the exclusivism inherent in defining secularism as the negation of religion. Both definitions make the mistake of lumping all believers together and ignoring irreconcilable differences within each religion between reactionaries and extremists on one side, liberals and progressives on the other. In the process, both ignore the very existence of Hindus who believe, 'This country, today, does NOT require temples for Ram or idols of Ram. It requires everyone of us to be a Ram, perfect law abiding citizen. The best solution for the Ayodhya dispute is to remove the idols of Ram and Sita which have been placed inside the Babri Masjid structure against all Agama Sastras, by people drunk with *Abhimana* and *Ahamkara* (such people are called hoodlums/thugs) and let our Muslim brothers to decide what they want to do with that structure' (TheBigThinkg 2010). The alternative definition of secularism as the belief that all human beings are entitled to equal respect and consideration, equality before the law and equal protection of the law, equal rights and opportunities, would result in including millions of humane and progressive people of faith under the banner of secularism. This in turn would marginalise extremists and strengthen secular activism to a point where it could ensure peace and communal harmony under all circumstances.

### **A Travesty of Justice\***

The verdict of the Lucknow bench of the Allahabad High Court in the vexed mosque-temple dispute in Ayodhya and most of the euphoric reactions to it are a reflection of the extent to which the illogically of majoritarian thinking has been internalised by considerable sections of the Indian polity.

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\* Shahjahan Madampat, gulfnews.com, 6 October 2010

The verdict, which can only be understood as an assault on India's secular traditions and a vindication of Hindu fundamentalist aggression from 1949, confirms beyond any shadow of doubt that the judiciary is not above the sectarian rot that has plagued India over the last three decades. The most dangerous fallout of the judgment is the stamp of legitimacy the court conferred on the majoritarian nationalist Hindutva movement, which provoked much bloodshed and mayhem across India.

While the court insinuated that the very construction of the mosque in the 15th century was illegitimate and even went against the tenets of Islam, it remained either ominously mum on or glossed over the illegitimacy of the series of aggressions committed by Hindu extremists well within its jurisdiction, beginning from the state-connived installation of an idol inside the mosque in 1949 and culminating in the wanton destruction of the mosque and the construction of a make-shift temple on its ground in 1992 against the explicit orders of the Supreme Court of India. The communal carnage and genocidal violence against the minorities that preceded and followed the destruction of the mosque would obviously merit no mention in such a verdict!

Many of those who hailed the verdict have done so on the assumption that a 'pleasing all' solution will bring communal peace. Jettisoning justice in the larger interest of peace is doing gross disservice to both justice and peace, for in the absence of the former the latter is but a mirage. Also important to note is the fact that a majority of India's Hindus consistently and fiercely opposed both politically and culturally the Hindutva movement and its attempts at undermining the country's pluralist moorings. They always knew well that a movement inspired by European fascism would do no good for a polity marked by such diversity of religions, cultures, languages, traditions and histories.

Had it not been a court verdict, but a compromise arrived at between the disputants, the division of the disputed land would still have made sense; dividing the land thus may have united the nation. Even an act of magnanimity on the part of the Muslim leadership in late-19th century or even later—giving up claims on the mosque in the larger interest of social harmony—would have perhaps preempted communal

violence in the late 20th century. But a court of law in a secular democratic country issuing a partisan verdict on the basis of spurious and politically manufactured claims of faith and fabricated archaeological evidences is a travesty of justice, to say the least.

A majority of India's internationally acclaimed historians and archaeologists scoff at the claim that the mosque was originally built either on the ruins of an ancient temple or after razing it to the ground.

In utter disregard of an impressive corpus of historical and archaeological scholarship available on the subject, the verdict put its stamp of approval on the much contested findings of the Archaeological Survey of India. The ray of hope for the country is the peaceful way in which the people went about their lives during and after the frenzied media debates over the verdict.

Decades of violence and communal carnage seem to have finally convinced them that 21st century India would remain captive to medieval passions and animosities so long as divisive issues such as the mosque-temple dispute are allowed to overshadow the real issues of livelihood and dignified existence.

A 21st century modern nation state can subordinate justice and fairness to its fear of a lunatic fringe only at great peril to its own future. The fact that the same lunatic fringe was implicated in the assassination of its father of the nation, Mahatma Gandhi, is perhaps worth remembering in times such as these!

### **Seize the Moment\***

On the heels of the Verdict, came The Games. Wicked ghosts of the past were dredged up during the Allahabad High Court verdict. But three days later at the Commonwealth Games, young India leapt forward to claim gold. A stunning opening ceremony showcased traditional diversity in high-tech style. The heart sank with a reminder of communal division. Immediately afterwards, it leapt upwards with a spectacular display of progress.

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\* Sagarika Ghose, *Hindustan Times*, 12 October 2010

The Ayodhya dispute seems headed to the Supreme Court. But instead of a judge, the dispute requires a politician, a born leader of people, to seize the moment. It requires a politician of courage to stride out from among the warring litigants, to embrace each one with warmth and to convey, "I come with respect for both religions. I come to build a new relationship between the Hindus and Muslims. Mutual respect for religious identity is the cornerstone of my new charter".

Today, urban religiosity is rapidly increasing among both Hindus and Muslims as a direct response to westernisation and perceived 'loss of traditional culture' due to globalisation. In 2007, in a Centre for the Study of Developing Societies poll, 42 per cent urban Hindus and 39 per cent urban Muslims said that religion is becoming more important in their lives. Yet, proud Hindus and proud Muslims (as opposed to 'political' Hindus and 'political' Muslims) have always respected each other. Khwaja Khusrau, the medieval poet, wrote: "Noble Delhi is the Garden of Eden. May Allah protect it from calamities. If it but heard the tale of this garden, Mecca would make the pilgrimage to Hindustan." For this Muslim poet, the holy land was Hindustan, not Mecca.

At the height of the stone-pelting protests in Kashmir, the Amarnath Yatra went off without a single hitch. Syed Shahabuddin, the stormy spokesman of 'Muslim' causes, remains a lifelong admirer of Chandrashekhar Saraswati, the late Paramacharya of Kanchi. On a visit to Kanchi, the latter told Shahabuddin, "You've come all the way to see me, before you leave let me show you a masjid nearby and please make sure you pray before you leave." A proud Hindu made sure a proud Muslim said his prayers before a journey.

Yet today we are doing a disservice to the Paramacharya of Kanchi. Systematic terrifying discrimination against Muslims in housing, the emergence of Brahmin-bania-thakur dominance in urban neighbourhoods, denial of opportunities and bank loans to Muslims, trumped up charges of terrorism against the youth, collapse of governance in Muslim majority areas have made the Sachar Committee conclude that the condition of Indian Muslims is worse than those of SCs and STs. Should a nation, where cosmopolitanism is 1,000 years old, not be ashamed that

it needs to tear down masjids and mobilise gangs of unemployed youth to prove its identity? Surely Hindus are too ancient and too sophisticated a people to fall prey to such un-Hindu practices and prejudices.

The Paramacharya wouldn't want Hindu majoritarianism to be seen as a force of evil. It is perceived to be precisely that because it has so far been coupled with aggressive discrimination and threat of violence. Yet, some majoritarian arguments are perhaps justified. The arguments that all citizens, irrespective of religions, should follow the laws of independent India, that Muslim citizens should plunge into the entire spectrum of Indian civic activism and not remain imprisoned only in the 'Muslim' cause, that Muslims should accept that Hindu 'faith' is as important as Muslim 'faith', are not without justification.

A sagacious Muslim leadership should realise that asking for the removal of Ram Lalla idols from the disputed site is an unrealistic expectation. Removal of the idol is certainly a legal possibility, but it's a political impossibility, just as the forcible removal of any object of worship of any faith from any shrine is difficult. For better or worse, the cultural mainstreaming of majoritarianism has been the BJP's contribution to Indian politics. Hindu majoritarianism must become respectable, decent and civilised. For this, a new charter with Muslims is a necessity.

What other concrete steps can be taken to implement a new Hindu-Muslim charter? The Centre should consider introducing a law against religious discrimination with safeguards to prevent its misuse. When we have a law against caste discrimination, why is there no legal protection against religious discrimination? School textbooks should be written exploring the many examples of co-existence that have existed between the two communities down the ages. Every government official, from the lowest babu and the topmost cop should take a course in Hindu-Muslim understanding. Corporates who are secular employers should be given awards and applauded. Celebrities must demonstrate how religious discrimination comes in the way of wealth creation and upward mobility. Bollywood should make a special effort towards challenging Hindu and Muslim stereotypes. Just as there are campaigns showing that it's not 'cool' to hit women, there should be campaigns

to show that it's not 'cool' to hate minority religions. And above all, India's modern politicians, if they want to make a mark on the global stage of statesmanship, must stay out of stoking religious hatred.

Let every Hindu see the tears running down the face of shooter Aneesa Sayeed, as she saluted the tricolour after winning her gold medal. Let every Hindu listen to Aslam Sher Khan when he said how proud he was to play in the 1975 hockey team against Pakistan. And let every Muslim mark the loud cheers the Pakistani team got when they walked out at the CWG opening ceremony. Let's create a new charter by becoming spiritual athletes from the land of Sri Krishna and Salim Chishti and aim for the gold medal in jumping the maximum number of hurdles in our minds.

### **Retrograde Judgment Rewards Hindutva Zealots\***

The parallel may not be palatable to everyone but the recent verdict of the Allahabad bench of the Lucknow High Court may be compared with a case that was decided some eight decades ago in a small colonial court of Mahad in Maharashtra. Like this one, which has great implication to our secular fabric the Mahad judgment pivoted the future of a nascent movement launched by the untouchables for securing their civil rights. The case was filed by the orthodox Hindus of Mahad to block the move of the untouchables to perform Satyagraha at the Chavadar Tank in Mahad in December 1927 with the contention that the tank was their private property and hence the untouchables could not trespass it. The court of the sub-judge of Mahad granted them temporary injunction on the eve of the proposed Satyagraha. Although the Satyagraha therefore was suspended, the case was zealously fought by none other than Dr Ambedkar and won. Just imagine if the court had relied on the faith and belief of the majority Hindus as the Allahabad judges did, what would have been the fate of the case and consequently that of the entire social reform movement in India. Surely, the faith and belief of the Hindus would have certainly

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\* Anand Teltumbde, [Countercurrents.org](http://Countercurrents.org), 4 October 2010

considered the Chavadar tank as theirs to keep the untouchables away in the first quarter of the last century.

Those were the colonial times. Nearly a century later, the independent India swearing by so many lofty ideals in its Constitution and aspiring to be a global superpower, we have gone back to faith and belief of the Hindus to decide the most important aspect of our national character, secularism, which represents a social contract this country had with its minorities. On many other aspects too, it would put us into reverse gear. Just imagine, if the courts were to take faith and belief of the Hindus for deciding cases, the decadent customs like sati, child marriages, untouchability, caste atrocities, etc. will all get validated and perhaps the Manusmriti may replace our Constitution. This judgement needs to be read in this perspective and seen in its potential danger to the basic premises of our nationhood.

Surely the Ayodhya judgment has miserably failed us on these counts. As such, it was a simple case of deciding property right over the disputed land around the spot on which the Babri masjid once stood. In absence of the clear title deed to the contrary, the court had to go by the physical evidence that the masjid existed there. There is a principle of possessory provision in the law which entitles land title to those who have uninterrupted and unchallenged possession of an area for twelve years or more. Surprisingly, the court dismissed the case of the Waqf Board and the Nirmohi Akhara claiming titles to the Inner Courtyard (where the Babri masjid stood) and Outer Courtyard (where the Ram Chabutara was located) respectively. It was indisputable that the masjid was at the spot uninterrupted, from 1528 until 1949 (when the namaz was last read there) and also the Ram Chabutara of Nirmohi Akhara, where puja, bhajan-kirtans were performed uninterrupted since 19th century. As regards the claim to the area under the central dome, as the birth place of Ram Lalla, a five-judge bench of the Supreme Court had already ruled in 1994 that it was incapable of legal determination while responding to the Presidential reference sent to it after the demolition of the Babri Masjid. There was thus a legal position of the highest court of the land to guide the three judges of the Allahabad court on that issue.

But the learned judges chose to seek archeological evidence to see whether there existed a Ram temple as contended by the Hindus. How was it relevant? Even if archeology came out with an evidence to show that there was indeed a Hindu temple, can it be construed that the land belonged to the contending Hindus? It only proved that before the mosque was built, there existed a Hindu temple and nothing more. There is no way to find out the property transaction that took place while constructing a masjid there. But our court has seen what even archeology could not see. The Archeological Survey under the then NDA government led by BJP, which spearheaded the Ram Temple movement, came out with the finding that there existed a place of worship at the place where the mosque stood. This evidence also was not incontrovertible, having been widely disputed by experts. But did it prove whose place of worship it was? It could well have been the Buddhist or Jain temple? Even assuming it was a Hindu place, could it be proved that it was a Ram temple and beyond that it was a place where Ram was actually born? However, the judges transcended all boundaries of reason and tended to accept the spot under the central dome as the birth place of Ram.

It is not uncommon in the countries like India having old civilization to get some remains of old structures beneath the existing ones. As a matter of fact, India does not have even archeological evidence for its claim of being an old civilization beyond Mohenjodaro and Harappa. The next living evidence after a dark period of a millennium and a half that one gets belongs to the Buddhist period which extended well until 9th century. It is during this period the historians tell us that entire India was dotted with Buddhist viharas, monasteries, and Buddha idols. Very little of that is seen today. It is a known fact that the Hindus had decimated Buddhism, and usurped most of these viharas to build their temples in medieval times. If the mosques were built at the site where temples stood, it is equally true that the temples were built at the site where the Buddhist viharas stood. Incidentally, when the Babri masjid contention was hot, such a claim was feebly proffered on behalf of the Buddhists by the late Dr Savita Ambedkar, the widow of Dr Ambedkar. Indeed, if the court is inclined to go into archeology, it will have to logi-

cally take cognizance of such a claim of Buddhists for the simple reason that Ayodhya figures more in the Buddhist (and also Jain) literature as the important religious place than in any of the Hindu text as the birth place of Ram. Not even *Ramcharitmanas* of Tulsidas, written in the 16th century in the same province has any mention of Ayodhya being the birthplace of Ram. In fact there is no incontrovertible evidence for Ram being a historical personality. The mythology takes him back to 17 lakh years and the pseudo science of the Hindutva ilk to the 7000 odd years. And still the judges have gone to establish the exact spot under the central dome of the destroyed Babri masjid.

Indeed, there is something very weird about the Ayodhya judgment and even the reactions it evoked. The judgment ignored the principle of hard facts and reasoning in taking cognizance of a nebulous notion such as faith and belief. Even on that count, it may be contestable that what is construed as belief of the majority of Hindus, is really the fabricated notion by the unscrupulous politicians hammered into the minds of gullible millions in recent times. If it was the belief of the majority of the Hindus, the history would have provided evidence of some disturbances during the five centuries of existence of the Babri masjid. The entire controversy started only after the idol of Ram Lalla was placed under the central dome surreptitiously by some miscreants in 1949 in the frenzied communal context of those times. It was ostensibly a political move, which launched a lasting communal contention that eventually culminated into destruction of a historical structure and created a countrywide mayhem devouring thousands of lives and most importantly the social contract between the country and its minorities, which has been the basis of our nationhood. Leave apart the majority of Hindus of India, even their majority in Ayodhya also does not believe that Ram was really born under the central dome. There are many temples in Ayodhya which are known to be the birthplace of Ram. It is only the Sangh Parivar which initiated and propagated this notion for the mobilization of Hindus for its political objective.

This judgement has validated that evil politics by accepting that it was the "place of birth of Lord Ram as per faith and belief of the Hindus"

as Justice Agrawal wrote and “The disputed site is the birth place of Lord Ram ... Hindus have been worshipping the place...and visiting as a sacred place of pilgrimage since time immemorial” as Justice Dharam Veer Sharma wrote. The main slogan of the Hindu zealots, “*mandir vanhi banayenge*” (we will build the temple at the same spot) is enabled by the judgment, vindicating their stand that it was the birthplace of Ram. The least that could have been done by the judges is to grant the Babri mosque site to the Muslims. It is futile to say, as Chidambaram observed that it has nothing to do with the act of demolition of the Babri masjid on 6 December 1992. Once this judgment validated the basic claim of the vandals that the masjid was an illegitimate structure built after the destruction of the Ram temple, the criminal case gets automatically weakened. The award of the title of the desired land to them accorded moral justification to the vandals’ act in retrospect. Even without this judgment, it was inconceivable that someone like Advani would be convicted for the vandals’ act. With the judgment, all those provocations of Advani and party that led the frenzied mob to raze the domes to ground get transformed into quasi truth.

The judgment is falsely defended as reconciliatory. It does not reconcile anything, when it openly gives out the Hindus what they even could not expect themselves. The fact that there was no adverse reaction to the judgment from people anywhere is no proof that it was accepted by all the communities. In any case only the Hindutva forces have been the trouble mongers; Muslims just expected a fair deal from the court. They had kept calm when someone installed a Ram idol right at the centre of their masjid; they maintained it when the locks were put around the idol and later opened allowing the Hindus to perform pooja in their masjid; they preserved it even when they were communally abused all over the country during Advani’s Rath Yatra; they controlled it when it was demolished by the frenzied mob and rather suffered in its aftermath. Babri masjid, as it were, was more important to the Hindutva zealots than ever to the Muslims. They were hurt not as much by the loss of the masjid as by the breach of trust by the Indian state. Still they reposed faith in the Indian judiciary but have now felt even betrayed

there. The Muslims are in no position to take combative posture and are trying to display magnanimity even to the extent of deciding not to appeal to the Supreme Court or to help Hindus build Ram temple at the allotted site. Actually, Mohammed Hashim Ansari, a nonagenarian leader of the Sunni Waqf Board proposed a negotiated settlement with Mahant Gyan Das, who as the head of Ayodhya's Hanuman Garhi temple and the Akhara Parishad, is said to have a good influence over Nirmohi Akhara. The only hurdle they both perceive is with the Ram Lallawallahs, supported by the Hindutva gang.

It is the Hindus, particularly Ram Lallawallahs who having got what perhaps they had not expected are belligerent and want to appeal to the Supreme Court. There was no question of any mischief this time for several reasons: one, the State did not want it because of the commonwealth games among others, and the Hindutva forces had lost their steam to recreate the mass frenzy as they did in 1990s. Even in their hey days, as many political observers would agree, the Hindutva forces would not have been as successful as they did without the tacit support of the State. This time the political equations were not the same. In order to keep the issue alive, the Hindutva forces will certainly go for an appeal. Probably all the parties would. The dispute would take another ten years and until then the site would be a veritable minefield ready to explode any time. The government will have to cordon off the area with heavy security and consequent inconvenience to the local population. Therefore in practical terms the judgment would not serve even the purpose of paving the way for reconciliation as some commentators imagined. Chidambaram is right when he termed the judgement as "not operational".

"I believe that the Ayodhya judgment will mark the start of a new chapter for national unity," Advani told reporters in his first reaction to the Ayodhya verdict. By now everybody knows the Hindutva definition of 'national unity'. It means that if the non-Hindus wish to live in India, they will have to live as per the terms of the Hindu majority. Advani could not hide his glee when he said, "It has affirmed the right of Hindus to build a temple at the sanctum sanctorum." Indeed, that's the crux of the Ayodhya judgement. But its import is not limited to

just that. By allowing faith and belief to overtake reason it has pushed the jurisprudence back into darker times, portending a big threat to the Constitutional vision of India.

### **Ayodhya Verdict\***

Three days after a Ram idol was placed under the Babri Masjid's central dome, Prime Minister Jawaharlal Nehru shot off a letter to UP Chief Minister G B Pant directing that the mischief be undone. His reason, "A dangerous example is being set there, which will have bad consequences." But Nehru's concerns were overridden by the local administrator, Faizabad's deputy commissioner K K Nayar. Even as he acknowledged that the installation of the idols was "an illegal act", Nayar refused to remove them from the mosque. His reasoning was that "the depth of feeling behind the movement ... should not be underestimated."

It was against the backdrop of this battle between the secular and the sectarian views that the first of the four title suits was filed on 16 January 1950. In allowing the idols to remain where they were placed on 23 December 1949, and in placing religious sentiment above the rule of law, the Allahabad High Court verdict 60 years later seems to have preferred Nayar's position to that of Nehru. Though thousands of pages in this verdict have been devoted to quotes from Hindu scriptures, it made little effort to examine the illegality of the 1949 act. The mischief played with the idols, in a bid to convert a masjid into a mandir, was central to the adjudication of the title suits.

Yet, the three judges on the bench, despite delivering separate judgments, adopted the common approach of treating the forcible installation of idols as a *fait accompli*. They did not dare question its legality or validity. This, despite the fact that the bench had, in May 2009, specially called for and placed on record the original file of the district administration that dealt with the 1949 episode.

The verdict could have been radically different had the judges mustered the courage to analyse this crucial issue. Advocate Anupam

\* Manoj Mitta, *The Times of India*, 7 October 2010

Gupta, who grilled an array of leaders on the Babri Masjid demolition before the Liberhan Commission, told TOI, "Since the title suits had derived from the installation of the idols, the judges would have had to acknowledge that the Hindu claim was based on a patent illegality and that nothing said about the history of the Hindu belief prior to 1949 would have cured this illegality."

In its anxiety to be pragmatic or conciliatory, the high court also pulled its punches on the demolition of the mosque in 1992 although it was a violent interference with the subject of the title suits. While it dwelt extensively on the Hindu "bent of mind" in the context of the belief about the exact location of Ram's birthplace, the high court did not attempt any such analysis of the mentality that propelled the demolition.

As a result, in a major blow to secularism, the high court allowed the vandals of 1992 to turn into the victors of 2010. This has made a mockery of the Supreme Court's 1994 declaration while reviving the Ayodhya title suits after a two-year limbo, "The Hindu community must bear the cross on its chest, for the misdeed of the miscreants reasonably suspected to belong to their religious fold."

Far from bearing the cross for the demolition, Hindu groups seem to have intimidated the high court into coming up with a solution that provides much cause for concern to Muslims and believers of secularism. By accepting faith as the determining factor for allotting the area under the central dome to Hindus, the system has shown no remorse to the affected community. The high court's refusal to let the illegality of the 1949 and 1992 events have a bearing on the title suits will mean that there can be no closure to the Ayodhya dispute any time soon. Its partition scheme has ended up vindicating, however unwittingly, those very forces that had so brazenly undermined India's commitment to secularism. As jurist Tahir Mahmood puts it, "What had begun as a title suit ended up with a decree of partition. Religious beliefs and sentiments had triumphed over historical facts and legal precepts. The judicial anxiety reflected in the judgment is understandable but its legal tenability is not beyond reproach."

The consolation is that the verdict could have been worse if the

judgment delivered by Justice D V Sharma, awarding the entire disputed site of 2.7 acres to Hindus, did not turn out to be a minority view on the bench. Sharma's judgment is an unabashed celebration of the fundamentalist Hindu perspective on the Babri Masjid.

The Ayodhya verdict actually fits into a pattern displayed by the Indian judiciary to suppress inconvenient facts. The Allahabad high court's failure to examine the implications of the 1949 and 1992 events is reminiscent of an infamous omission by the Supreme Court in its much touted judgment upholding *Hindutva*. This ideology of Hindu hegemony received judicial approval because the Supreme Court, while equating *Hindutva* with the liberal ethos of Hinduism, steered clear of the fact that the term had been coined by Veer Savarkar to suggest that India belonged only to those for whom it is both birthplace and sacred land.

Thanks to this vital omission, the BJP derived much legitimacy from the SC verdict on *Hindutva*. It remains to be seen how despite the restraint displayed by it for the time being, the BJP will politically leverage the verdict in the Ayodhya case. It is no coincidence that Nayar who defied Nehru's order to remove the idol from the Babri Masjid went on to become an MP of Jan Sangh, forerunner of the BJP.

### **The Story of the Lion, the Fawn and the Legend of Ram\***

Paramilitary soldiers escort the lawyers of Sunni Central Waqf Board and All Babri Masjid Action committee as they leave the high court in the northern Indian city of Lucknow on 30 september 2010. A court ruled that the site of a demolished mosque in India would be divided between Hindus and Muslims, in a ruling that could appease both groups in one of the country's most divisive cases.

An aesopian story I heard in 1990 from a Hindu priest of Ayodhya may hold a lesson for India's dizzying romance with religious revivalism, which is inexorably mutating into religious fascism.

According to the story, a hungry lion spotted a fawn that was drinking water from the same forest stream as him and decided to make

\* Jawed Naqvi, Dawn.com, 18 October 2010

a meal of the baby deer. but being the king of the jungle the lion was prone to guilt pangs and required a veneer of responsibility. He clearly needed an excuse to attack the helpless creature. So he first pulverised the fawn with a predatory roar, and then ambled to a whispering distance from his quarry.

“How dare you drink from the same stream as I? You have polluted the water.” The lion thundered menacingly. “But please sir, I am here downstream and you were perched up there, upstream, so how could I pollute your share of the water? There’s a mistake.” The fawn’s logic didn’t please the lion. “Well, well, well. Aren’t you the rascal that hurled abuses at me at the forest fair last year?,” the famished beast roared, changing his argument.

“Your majesty,” the shaken fawn replied with mock bravery. “I am not even a year old yet, so how could I have been at the fair where someone seems to have abused you last year?” The impatient lion didn’t wait for another chance. “If it wasn’t you then it must have been your father or your grandfather who abused me, and now you must pay for it.” Just as he had planned at the outset, the lion easily killed the baby deer which was no more than a morsel for him. But since his appetite was enormous he resumed the search for his next meal. Or so goes the fable. The man who told me the story was an associate of Baba Lal Das. The Baba was appointed as the chief priest of the controversial makeshift Ram Temple inside the Babri Masjid’s sanctum sanctorum by a high court order in the 1980s. Apparently, he was too much of a good Hindu, liberal and open-minded about his religious beliefs to merit the post. So when the Bharatiya Janata Party (BJP) came to power in Uttar Pradesh he was promptly evicted from the sensitive job. Lal Das became a star witness for the prosecution in the criminal case of the mosque’s demolition in 1992.

I learnt during my recent visit to Ayodhya that the Baba was killed shortly after the BJP inspired the sacrilege at the mosque-temple where he was the *pujari*. Veteran journalist Sheetla Singh whose *Jan Morcha* newspaper bravely covered the Ayodhya story from his precarious but strategic perch in the neighbouring Faizabad told me that the Baba

was publicly discredited before his mysterious death, and some of the rightwing lumpens called him a Marxist, which he wasn't.

You don't need more than a daylong visit to the warren of meandering lanes and temples of Ayodhya, including the state-protected and awkwardly erected shrine to Lord Ram atop the rubble of the demolished Babri Mosque, to discern how the overtly sleepy, dusty hamlet, barely four kilometre from Faizabad, the former capital of the Shia Nawabs of Oudh, has become the epicentre of a fascist project that cannot be stopped by any one of the formidable institutions of the Indian Republic.

The juggernaut cannot be stopped by the courts. Hitler was sent to prison for the beer hall putsch and he came out a hero. Some of my Left and liberal friends have expressed valid doubts about the high court's recent verdict in which it divided the disputed land between Hindus and Muslims. One of the judges claimed it was the spot where Ram was born and, therefore, it should be handed over to the Hindus. I don't for a moment doubt that the judgment was absurd and dangerous and political and certainly not legal. But the entire argument about legality is useless.

The religious upsurge cannot be stopped by legal arguments and intentions of fair justice. Parliament on its part is largely divided between Hindutva and soft hindutva. There is a robust argument that if it has to be hindutva victory it should be full-blooded, why settle for the spurious version. There is no reason to believe that the government in delhi—the present one and its predecessors—could be ever interested in stalling religious revivalism, much less frontally taking on its proteges, the determined hordes of hindutva.

Possibly the only way to defeat the spreading hatred would be through a vigorous political mobilisation of the largely secular and predominantly Hindu masses. There is nobody in sight to organise them, much less to lead the campaign. Virtually each and every priest in Ayodhya is a political vendor of a garbled sense of Hindu valour that was blunted by the Muslim invaders. In a temple on the meandering route to the site of the Babri rubble, a gaggle of energised priests runs an outfit devoted to king Dashrath, father of Lord Ram. It is difficult

to determine if the saffron clad priests were keener for me to admire the pictures of hindutva heroes adorning the walls or do a *darshan* of the deities. Their narrative of the mosque's demolition was blood curdling to put it mildly.

A smaller problem was that they demanded money for the Ram Temple project but I had been instructed by my colleagues in Ayodhya not to carry a wallet or even a wrist watch, since these were not allowed at the Ram janmabhoomi site. The *pujari* at the heavily guarded site proper was also expecting some money to be put in the charity box but I had none and was rebuked with an angry glare. To approach the site of the makeshift temple you have to pass through a meandering tunnel of a thick metal gauze. Just as well, since the kilometre-long tunnel not only marshals, you to a safe distance from the idols of Ram and his consort Sita. It also guards the pilgrims from an excitable army of monkeys that has been allowed to prosper in and around the temples out of reverence.

On completing the *darshan* you automatically enter the bustling bazaar selling mementoes and this is the really lethal part. These contain videos and photographs celebrating the demolition of the mosque and spewing venom against muslims—or practically anyone who does not agree with the VHP worldview. The venue has little to do with the legend of Ram like the several absorbing ones of Homi Wadia fame we grew up with. They have everything to do with the political project launched in his name. Members of the security forces supposedly guarding the area find time to join the spine chilling video show. It is useless and perhaps too late to assure anyone in Ayodhya of Allama Iqbal's famous affirmation of Ram as the Imaam of Hindostan. Or who would be interested in Rasoolan Bai's nostalgia-laden voice in Ayodhya today? Listen to her heart-tugging *chaiti*: "*yehi thaanee motia hiraae gaele rama/ kahaan wa'an wehka dhoondhoon?*" (it's here somewhere I lost my pearl o Ram/ now what am I to do, where else to look?) Rasoolan Bai's house was burnt to cinders in Gujarat in the 1969 communal violence. That was evidently a forerunner for the project that saw fruition in 2002.

As my liberal and predominantly Hindu friends and their Muslim comrades in Delhi mull the next steps of the Ayodhya conflict in the Supreme Court, they should bear in mind the fable of the lion and the fawn. The project is not merely an assault on Muslims by the BJP and its political cousins. There is a completely secular looking onslaught under way to violate the sanctity of the Niyam Giri mountains in Orissa which the local Dongria Kondh tribes people worship as their deity. The mountains contain billions of dollars worth of bauxite. The Babri mosque rubble contains the chance to seize political power. There is no political worldview without an economic insight. The lion will be hungry even after a Ram temple is built in Ayodhya.

### **Verdict on Ayodhya and After: Calm Before Storm?\***

In the wake of the historic Ayodhya judgment, there prevailed peace and tranquillity even in the communally charged atmosphere and sensitive areas across the country. Anticipating communal disturbances, on account of court judgment, various state governments deployed dozens of companies of armed forces, as a precautionary measure. Some such states had declared holidays so as to ensure safety and security for its people. Both, the Central and state governments and private media agencies had tried to deescalate tensions that would have triggered off in the event of impairing the feelings of one community or the other.

Adequate arrangements were made to face any extraordinary situation anywhere in the country. So much for the security preparedness of the government that eternal vigilance was imposed whereby the life of the nation was paralysed for hours together on the eve and the day of verdict. The communal situation was expected to spread like a wild fire and catch flames at once. In consequence, there appeared a nationwide strike-like situation as if some parties observed a Bharat Bandh on that day. Surprisingly, no untoward incident, leave alone communal flare-up, was reported even after the court verdict was pronounced or a week thereafter! Not only hours passed, but several days passed off

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\* Dr K Vidyasagar Reddy, [Countercurrents.org](http://Countercurrents.org), 11 October 2010

peacefully, without occurrence of any single communal disturbance anywhere in the country. Neither of the parties to the Ayodhya dispute, be they Hindus or Muslims, expressed dissatisfaction over the majority judgment that was delivered by the Lucknow Bench of the Allahabad High Court. Nor was there any party ready to celebrate the judgement so that it could be cashed in on politically or electorally.

Of course, some of the lawyers, representing the Hindus view point, repeatedly raised their hands showing victory sign, when the whole nation was watching the proceedings, via television channels, in the court premises. As soon as they went out of the court room, desperate media channels were there to catch the initial reactions of the advocate fraternity, on the gist of the judgement. Apparently they claimed success in the case. Their tone and tenor besides their body language was so provocative that the television viewers were shocked. Since their provocative gestures, as if their version was endorsed by the court, were irritating to not just Muslims but to those millions of secular Indians. Their behaviour was as offending as it would certainly evoke negative reaction from the losers in the case, the Sunni Wakf Board, Ayodhya.

However, thanks to some responsible media persons and anchors, provocative remarks and gestures of the Hindu lawyers were subjected to criticism at once. Meanwhile, the copies of judgment of three justices, separately and comparatively commented upon in the media. Besides, there were some distinguished jurists, academics and legal experts, whose credentials, secular and otherwise, were never questioned, tried to present a balanced account of the verdict. While appreciating the conciliatory approach that the judgment tried to follow during the course of settling the six-long decade sensitive issue, the commentaries, irrespective of their correctness, pacified the aggrieved with the exercise of filing an appeal in the Supreme Court within three months, till when the verdict would be kept in abeyance. Obviously, that would dilute the reactionary approach on the part of the communalists, be they Hindu or Muslims.

In any case, no one needs to take any hasty step on the subject, as it is already age-old and under subjudice. However, heavens will not fall if the matter is deferred in the name of Appellate exercise in the Supreme

Court, till such time when mutual arbitration is made possible. Or else, one can wait till the highest court decides the issue some way. Keeping these things in view, the aggrieved parties, perhaps the Wakf Board and Muslims did not respond the way it was expected to do so. Even the Muslim leadership, politically or otherwise, had also weighed several aspects only to maintain calm for the time being. For, the verdict has the potential of causing concern to the Muslims. That might even provoke them to resorting to any means, including the violent ones. Of course, the consequences would be more harmful than the causes of the judgment.

Neither historical nor legal evidence was cited to justify the Hindu-religious argument. That alone is the bone of contention in the whole episode. It is not a piece of land or type of land that was under dispute. Rather, the issue of place of birth of Lord Ram, that was undecided from times immemorial. Even the Supreme Court was reluctant to decide the issue for want of evidence. Then how come the lower court, Bench of Allahabad High Court took upon itself the task of deciding something that no one can do, as Lord Ram was considered divine, in the epics and stories of Ramayana? How can a judge, merely a human being decide the exact of place of birth of Lord Ram, the deity of majority of Hindus? How can the Bench decide on the oldest structure/temple, as was destroyed, when it was silent on the existence of the mosque that was demolished in 1992 itself?

Many such questions are unanswered in the judgment or in its aftermath. Leave alone Muslims, even lay public are puzzled as to why the demolition of mosque was overlooked by the judges. Instead the verdict seems to have justified the criminal act of karsevaks who destroyed the mosque believing it as the exact place of birth of Lord Ram. The judges having believed that Ram lala idols were placed in the Babri masjid in 1949, quite clandestinely, or discretely had regularised the act now after sixty years. Whereas petition of the Sunni Wakf Board with respect to . the demolition of mosque, just an 18 years-old incident was dismissed as time-barred. Instead of punishing the guilty for demolition of the mosque, the bench justified their act by way of permitting the temple construction there itself.

Although the judgment is aimed at helping the temple construction, legally with government support indeed, there was none, not even Muslim leadership, which raised any noise on the issue, leave alone objecting to it. Filing an appeal in the Supreme Court is a follow-up action that the concerned lawyers can undertake within three months. But what about those democratic minded citizens who keep mum so far? What about those secular parties and leaders who maintain a stony silence on the issue of religious freedom to the minorities? What about the *bahujans* who consider Muslims as their brethren, but do nothing when their identity is at stake? Ultimately, let good sense prevail in any Indian, who seeks justice and join the movement for social justice, when fellow Indians, be they Muslims or minorities, are under attack, legally or otherwise! Lest, we cannot but consider the prevailing situation as volatile, or else, 'calm before storm', as the case may be!

### **Fundamental issue in Ayodhya case\***

The Babri Masjid was unauthorisedly demolished and the culprits must be brought to book under the rule of law. But in law, a temple and a mosque cannot be considered at par as far as sacredness is concerned. This is the fundamental truth constantly being evaded on the Ayodhya issue.

TR Andhyarujina is a highly respected and accomplished lawyer who is very skilled in court craft. His major point in his Op-Ed [A Verdict that legitimises the Masjid demolition, *The Hindu*, 5 October 2010] is that the 8,700-plus pages judgment of the Lucknow Bench of the Allahabad High Court on the Ayodhya dispute implicitly condones the 1992 demolition of the Babri Mosque structure because the court did not take judicial notice and draw adverse inference [in fact no reference] against the directly or de facto affiliated parties (in the litigation before the Bench) in that destruction.

I do not dismiss this point because the structure was indeed unauthorisedly demolished and therefore the culprits and the planners of

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\* Subramanian Swamy, *The Hindu*, 8 October 2010

this demolition, whoever they are, have to be brought to book to uphold the rule of law. For this purpose, there is an ongoing criminal case in a special CBI-designated Sessions Court.

In this context, the question is whether every court will have to take judicial notice of this alleged illegal violent event even after the Supreme Court of India has taken such notice. Mr Andhyarujina himself quotes the Supreme Court judgment [reported in (1994) 6SCC376] in which the court, while absolving the Hindus as a community of the blame, nevertheless held, "Hindus must bear the Cross for it." This was an extraordinary judicial observation and has profound implications for all communities whenever religious premises are destroyed. The fact nevertheless remains that throughout the last several centuries, Hindus have deeply held as sacred as Ram's birthplace that exact spot where the Babri Masjid once stood. This is recorded in many official and judicial proceedings.

In 1885, for example, Mahant Raghubar Das, in a Suit No. 61/280 of 1885 filed in the court of the Faizabad sub judge against the Secretary of State for India (who was based in London), prayed for permission to build a temple inside the perimeter of the mosque. His suit was dismissed on 18 March 1886, but in his order the sub-judge, an Englishman, stated: "It is most unfortunate that a masjid should have been built on land specially held sacred by the Hindus. But as the event occurred 358 years ago, it is too late now to remedy the grievance." Since the British as a policy never sought to disturb the communal and social status quo in India as evidenced, for example, on the 'Sati question,' the judge took the easy way out and dismissed the suit.

### **Temple did exist**

It is now well established by GPRS-directed excavations, done under the Allahabad High Court monitoring and verification in 2002-03, that a large temple did exist below where that Babri Masjid structure once stood. Inscriptions found during excavations describe it as a temple of Vishnu Hari who had killed the demon king Dasanan [Ravana]. The Archaeological Survey of India (ASI) confirmed these findings on investigations that were directed by the High Court.

A fundamental question arises: Can a temple and a masjid be con-

sidered at par as far as sacredness is concerned? Relying on two important apex judgments that hold the field today, the answer is No. A masjid is not an essential part of Islam, according to a majority judgment of a Constitution Bench of India's Supreme Court (*op.cit.* 1994), whereas according to the House of Lords, U K (1991), the temple is always a temple even if in disuse or ruins.

In the famous *Ismail Farooqui vs Union of India* case [reported in (1994) 6 SCC 376], the Supreme Court of India observed, "It has been contended that a mosque enjoys a particular position in Muslim law and once a mosque is established and prayers are offered in such a mosque, the same remains for all time to come a property of Allah .... and any person professing Islamic faith can offer prayer in such a mosque, and even if the structure is demolished, the place remains the same where namaz can be offered" [para 80].

The Constitution Bench then rejected this contention, stating, "The correct position may be summarised thus. Under Mohammedan law applicable in India, title to a mosque can be lost by adverse possession. A mosque is not an essential part of the practice of the religion of Islam and namaz (prayer) can be offered anywhere, even in the open. Accordingly, its acquisition is not prohibited by the provisions in the Constitution of India" (para 82).

Thus what was wrong with the demolition of the Babri Masjid on 6 December 1992 was that it was unauthorised by law and hence a criminal offence. Otherwise any government can deprive Muslims of the Babri Masjid, which would be lawful if the government decides to do so in the interest of public order, public health and morality (Article 25 of the Constitution). This is the position in Islamic law as well since in Saudi Arabia the authorities demolish mosques to lay roads. Even the mosque where Prophet Mohammed used to pray was demolished.

#### **Nataraja statue case**

A temple however is not in the same category as a mosque in law. When I was Union Law and Justice Minister, this question of the status of a temple—even if in ruins or without worship—came up before me in November 1990 in a case of a smuggled-out bronze Nataraja statue that was

up for sale in London. The Government of India under Prime Minister Rajiv Gandhi had decided to file a case in the London trial court in 1986 for recovery. The Nataraja statue had by then been traced to a temple in ruins in Pathur, Thanjavur district. A farmer named Ramamoorthi had unearthed it in 1976 while digging mud with a spade near his hut.

When the news spread, touts of an antique dealer reached Ramamoorthi, paid a small sum, and smuggled it out to London, where in 1982 it was sold to a private company. In turn, the buyer sent it to the British Museum for appraisal and possible purchase. By then the Government of India was on to it and asked the British government to take action. The Nataraja idol was seized by the London Metropolitan Police, the company sued the police in court for recovery, but lost the case. An appeal was filed in the Queens Bench, which was dismissed on 17 April 1989. The buyer company went to the House of Lords.

On 13 February 1991, when I was the Union Law Minister, the landmark judgment dismissing the buyer's final appeal [see (1991) 4 All ER 638] was delivered. The bench consisting of Justices Purchas, Nourse, and Leggatt concluded, "We therefore hold that the temple is acceptable as party to these proceedings and that it is as such entitled to sue for the recovery of the Nataraja" [page 648 para g]. Thus a disused temple in ruins became a party, and we as Siva bhaktas as de facto trustees thus recovered the Nataraja idol.

No such ruling anywhere in any court exists for a mosque for the simple reason that a mosque in Islam is just a facilitation centre for reading namaz, and has no essentiality for Islam as a religion. It can therefore be demolished and/or shifted in India under the Constitution as any building can—but of course authorisedly for a public purpose such as public health, public order or morality. The Union Government is committed by virtue of its affidavit filed in the Supreme Court in 1994 to do so if it is found that a temple structure exists below the mosque site. It must hence perform now and deliver on its commitment on oath sworn in the Supreme Court. This is the fundamental truth in the Ayodhya dispute that is being constantly evaded by those criticising the Allahabad High Court Judgment.

## **Ayodhya is religious, not political now\***

A minor footnote to the recent public discussions on the Ayodhya controversy may be an eye-opener for those who argue that India has “moved on”.

A TV presenter with 'liberal' sympathies wrote on Twitter: “Whether or not Lord Ram is the rightful owner or a divine encroacher is...unlikely to be settled in a hurry.” It was a harmless tweet marked by an impish turn of phrase. Unfortunately, a section of the twitterati didn't read “divine encroacher” so indulgently. They were outraged. Rather than risk an ugly controversy, the writer wisely decided to delete the tweet and 'move on'.

That Indians are disinclined to lace their earnestness with self-deprecating humour is well known. Also quite marked is their ability to take offence too easily, particularly on matters of faith and history. It does not require a Pope Benedict XVI to tell Indians, as he told Britons last week, to restore the “legitimate role of religion in the public square.” Organized religion has never departed from Indian mohallas, so much so that 'secularism' has had to be expediently redefined to suit Indian tastes.

What, therefore, underpins the proclamation that contemporary India has 'moved on' and broken decisively with its own past? There may be a justified reason for believing that the frenzied mobilization witnessed during L K Advani's rath yatra and the fateful 6 December 1992 karseva won't recur today. To link this wariness to a growing indifference to 'public' religion and a rising tide of secularization (in the Western sense) is, however, facile. Except to a clutch of sadhus who are still fighting the good fight, the Ayodhya movement wasn't merely about reclaiming Ram's 'desecrated inheritance'. The largest ever mobilization of Hindus as Hindus was a robust assertion of a political identity and an argument against being taken for granted politically. Ram was merely the symbol of the explosion, not its rationale.

As with many unstructured mass movements, not everything about the Ayodhya turmoil was enduring. The demolition didn't trigger

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\* Swapan Dasgupta, *The Times of India*, 26 September 2010

either a revolution or a regime change; it merely heralded the end of Congress dominance and a change of government from 1998 to 2004. It nurtured Hindu pride but couldn't insulate this new nationalism from the challenge of caste assertion. And on the negative side, Hindu aggression fuelled Muslim angst, which subsequently fed into the global churning in the ummah.

Yet, there is one legacy of Ayodhya that has withstood political ups and downs and India's transition from insularity to globalization: Hindus have ceased to be defensive about their faith and ritual practices. Indeed, they revel in these with astonishing cockiness.

The phenomenon needs some explanation. Sustained exposure to foreign rule and Western 'enlightenment' had shaken the cultural self-confidence of the Hindu educated classes. The impression that their faith and ritual practices were somehow 'backward' and deficient in the index of modernity took hold of the enslaved Hindu imagination. Mahatma Gandhi, always a proud Hindu, contested the degradation by challenging modernity itself. However, being excessively practical, Hindu society found Gandhi's anti-modernity to be utopian and quietly brushed it aside. In rejecting Gandhi's crankiness, Jawaharlal Nehru swung to the other extreme. A product of western cosmopolitanism, he reinforced the elite discomfiture with popular Hinduism. In the Nehruvian ideal, being a good Hindu meant being a 'secularized' Hindu. It meant upholding abstruse, metaphysical traditions and spurning Bhagwati Jagrans as the Hinduism of clerks and Class IV employees.

This social snobbery was a factor behind the elite's incomprehension of the Ayodhya movement. And it is a similar revulsion which makes them posit the apparent absurdity of a Ram Janmabhoomi to the cool, techsavvy cosmopolitanism of the New India.

The irony is that this New India is more religiously and assertively Hindu than ever before. Judging by the sharp increase in middle class pilgrimages, the exaggerated *sindoor* of the new bride, the frequency of car *pujas* in temples and the holy wallpaper in the laptops of the young and successful, the sharp rise in national self-confidence has come in the wake of a spectacular revival of the *Sanatan Dharma*.

India has 'moved on'. In the 1990s, Ayodhya was a political issue; today its importance is religious. The implications are ominous.

### **Babri Masjid revisited\***

The Babri Masjid was built in 1528 at Ayodhya by Mir Baqi, the governor of Ayodhya at the time. He built it adjacent to the Ram chabutra, which is held sacred by the Hindus. This was a clear deviation from the Islamic principle. According to Islam, the places of worship of two religions should be built at a considerable distance from each other.

When Caliph Omar visited Jerusalem in AD 638, he wanted to offer his prayers. At that moment, he happened to be in the Church of the Resurrection of Jerusalem. The Christian bishop told him he could offer his prayers inside that very church. But the caliph refused. He said that he would offer his prayers at a stone's throw from the church. If he offered his prayers right there inside the church, it would create a controversy in the future. The Muslims of later generations would say that they would build a mosque there because their caliph had offered prayers there. Notwithstanding this historic example, Mir Baqi built a mosque adjoining a Hindu sacred place. This was bound to create problems.

In 1949, some Hindus placed three idols inside the Babri mosque. Unable to manage the crisis this created, the Muslims reacted. Their failure to adopt the prophetic principle in this regard started an unending controversy between the two communities.

At the time of the Prophet, in the first quarter of the 7th century AD, idol worshippers had placed 360 idols in the premises of the Kabah, Mecca. But the Prophet never reacted. He simply ignored the situation and tried to change people's hearts. And the result was that, within 20 years, Meccans abandoned idol worship and became the followers of the Prophet. Then those Meccans themselves removed the idols from the Kabah without any confrontation or bloodshed.

In 1991, during the prime ministership of Narasimha Rao, the Indian Parliament passed a legislation called the Places of Worship

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\* Maulana Wahiduddin Khan, *Times of India*, 12 October 2010

Act, 1991. According to this Act, the Government of India was bound to maintain the status quo of all places of worship on the Indian soil as it stood in 1947. But there was an exception of the Babri masjid of Ayodhya. The Act maintained that the Babri masjid issue was in court, so the government would wait and it would be its duty to implement the verdict of the court when it was given.

This Act was a most reasonable one and Muslims should have accepted it as such. But they rejected it outright and resorted to street demonstrations. The demolition of the Babri masjid on 6 December 1992, was nothing but the culmination of this negative course of action adopted by the Muslims. At that time I had said, "*Babri Masjid ko Hinduon ne toda aur Musalmano ne usko tudwaya.*" (The Hindus demolished the Babri Masjid but Muslims provoked them to do so.)

The Muslims subsequently took the very impractical line that the masjid should be rebuilt on the same spot. At that time, I had said that the rebuilding formula was totally unrealistic; Muslims should accept the alternative formula of the relocation of the mosque.

It is a well-known fact that the relocation formula has been adopted by Arab countries. When these countries wanted to replan their cities, they found that there were many mosques that were obstacles to city planning. They did not hesitate to relocate such mosques. I had said at the time that Muslims in India ought to adopt this same formula and accept the relocation of the Babri mosque. But again the Muslims refused. Now, after the judicial verdict on 30 September 2010, the Muslims are generally saying that this verdict is contrary to their hopes and they will challenge it in the Supreme Court. But this is not going to solve the problem. It is an emotional reaction to the verdict and not a well-considered response. Suppose the Muslims refer the issue to the Supreme Court and suppose it issues a judgement in their favour. Even then it will not solve the problem. The Muslims themselves set a precedent in 1985, which is enough to predict the situation as it will unfold.

In 1985, the Supreme Court issued a judgment in the Shah Bano case, which ran counter to Muslim aspirations. So the Muslims refused to accept the judgment. They took to the streets and the government

was compelled to pass a new Act. The Hindus would certainly say that it was now their turn to refuse the verdict issued by the Supreme Court.

The only solution to this problem is for the Muslims to decide to put a full stop to this issue. If they put a comma, then there will be no end to it. We have lost 60 years by putting a comma after comma and now this is the last chance to bring closure to the issue so that the relationship between the Hindus and the Muslims may be normalised. And this full stop means either leaving it to the government to implement the verdict or agreeing to the relocation of the Babri mosque. There is, in reality, no third option.

### **Ayodhya Verdict: Implications for Indian Democracy\***

Much has been said about the Ayodhya verdict especially on the legal technicalities and historical loopholes. This comment is not on these aspects but on the socio-political implications of the verdict.

To recapitulate, Allahabad High Court on 30 September 2010, has given judgment on the six decade old title suit on the land in Ayodhya. A mosque, popularly known as Babri Masjid, stands on this land since centuries, however, the land is claimed to be the birth place of a Hindu deity Rama, by certain Hindu groups, and in the year 1949, the idols of Rama and Laxman have 'appeared' in the mosque. In the said case, three litigants have claimed ownership to the land. The three judges deliberating on the case have pronounced to divide the disputed land into three equal parts among the litigants namely, Ram Lalla represented by Triloki Nath Pandey; the Nirmohi Akhara and the Sunni Waqf Board.

The verdict, at least in the initial stage, was appreciated for reconciling a long lasting and sensitive controversy in a democratic manner. It was considered a judgment that would, perhaps, result in constructing 'a wall of harmony' among the Muslims and the Hindus—a wall that would not separate but harmonize a Hindu temple and the Muslim mosque in close proximity.

A few intellectuals appreciated the 'matured' reaction of people

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\* Ranu Jain, *Deedahwar News & Views*, 21 October 2010

including Muslims, to the verdict. They felt that the reaction reflected faith in the institutions of democratic India especially in the judiciary. Absence of riots after the judgment corroborated this interpretation. However, as later developments show, the judgment has not reconciled the issue and all the three litigants have expressed their plans to challenge the judgment in the apex court.

Conversely, I wonder whether the judgment can be taken as democratic at all. The query gains significance especially if democracy is not taken as a number game but as a process of decision making including those processes that take into account concerns and requirements of all the contesting parties and arriving at a decision through consensus. As aptly put by Jilani and confirmed by almost everyone, "The honourable judges have arrived at findings not on the basis of facts or evidence but on the basis of faith and belief. In other words a new category has been introduced into the judicial process." Ashgar Ali Engineer has discussed implication of this process of arriving at a judgment in India, a country of multiple faiths. To quote him, "...all three judges have invoked values of peace and reconciliation rather than constitutional values of democratic India. Law is and must be indifferent to the faith of litigants and even of judges and the judgment, in a democratic country like India which has maintained its independence of judiciary and constitutional values for last sixty years.... Tomorrow other judges motivated by their faith may use this judgment as a precedent and deliver other judgments invoking faith.... Thus, stretching the argument.... in a democracy after all numbers count and so faith of majority community will play greater role than the faith of minority community and court of law will thus become majoritarian in their attitude and all the legal values and protection of minorities and their faith in the constitution may be ultimately subverted". Yet another reaction to the judgment is seen in the planning of a group of Dalit rights activists to demand that the Buddha and Jain viharas (place of worship) that have been converted to Hindu temples should be returned to the original owners. In short, the judgment may increase communal tension and marginalization of the minorities in the nation.

The judgment based on 'faith and belief' can be taken as going against the principle of secularism whether defined in terms of distancing state from religion or giving equal space to all religions. The statement gains significance when one recapitulates that as far as the case of Babri Masjid is concerned, the then the Prime Minister Jawahar Lal Nehru ordered removal of the statues in 1950, but the contemporary district magistrate of Ayodhya declined to follow the instruction pleading law-and-order situation in the city. Again, when a lawsuit against the mosque was filed in the district court in 1950, the secular State government of Uttar Pradesh assured Muslims that the lawsuit would be dismissed and categorically submitted in the court that the building had never been a temple and was always a Muslim place of worship. The present judgment reflects the changing nature of Indian judiciary. The submission can be supported by revisiting the case of Afzal Guru where capital punishment was granted to Guru in order to satisfy the 'collective conscience of the society'. The judgment stated, "The incident, which resulted in heavy casualties, had shaken the entire nation and the collective conscience of the society will only be satisfied if capital punishment is awarded to the offender."

The rhetoric employed in both the cases, assuages the collective 'national' conscience, creating a dent in the image of India as a secular multicultural country. As expressed by many Muslims or empathetic individuals in their private spaces, social networking sites or blogs, the judgment is majority oriented and has legitimized the rightist claim that India belongs to the majority community of the Hindus (assumed as a monolith). It not only justifies the rightist claim for priority in the cultural and religious spaces in Indian democracy but also vindicates their stand. Modi has called it the first step towards *Ramrajya*, implying less or no space for the 'other' cultures and faiths in the *Ramrajya*, "VHP has made it clear that Sangh Parivar outfits will not rest with the ownership of only 110/90 feet of land but will want the entire 67 acres to be handed over to them". They have expressed a desire to make a Bhavya Mandir or grand temple on the premises and have demanded the Muslims to forego their claim on the land. The essay in the *Frontline*

is appropriately titled, "Hard line is back". I would like to add "more aggressively so".

The silence or the ready acceptance of the Muslims has popularly been interpreted as 'matured', but I feel it expresses a feeling of insecurity as well as lack of faith and trust in the Indian democratic institutions and processes. The judgment has reduced Muslims to second grade citizens in India, projecting faith and beliefs of the Hindus more worthy of consideration, not giving any space to the faith and beliefs of the Muslims. Babri Masjid demolition, Mumbai and Gujarat riots as well as acquittal of the rioters by the Indian courts appeared to have dwindled the faith of the Muslims in Indian democratic institution and processes. They appear neither to 'trust' the Indian State to save them nor hope for justice to their causes and needs. Many Muslims including the first litigant, Mohammad Hashim Ansari, have expressed appreciation of the verdict because it would not lead to rioting by the rightist groups. Muslims appeared to have foregone demand for justice for a space to live/survive without constant fear of violence or losing one self and the dear ones - survival in hegemonic terms, giving them a subjugated position but perhaps allowing them to struggle to acquire '*roti, kapda aur makan*' (food, cloth and accommodation). They do not trust the state machinery to protect them in case of a judgment favourable to their cause. The reaction of Muslims reflects their alienation from the state.

The famous social philosopher Charles Taylor has talked about the need of 'a high degree of cohesion' for sustaining democracy. This cohesion thrives on the trust that emerges due to the process of participation in decision-making. To quote Taylor, "If... a sub group of the 'nation' considers that it is not being listened to by the rest, or that this rest cannot understand its point of view, it would immediately consider itself excluded from joint deliberation. Popular sovereignty demands that one should live under the laws that derive from such deliberation. Anyone who is excluded can have no part in the decisions that emerge; consequently, these lose their legitimacy for him or her. A sub group that is not listened to is in some respect excluded from the 'nation', but by this same token, it is no longer bound by the will of that nation." An alien-

ated population can withdraw or migrate out of the nation taking away with it human and non-human resources. Frustration and helplessness can also be expressed in violence and aggression; in self demolition and demolition of others. It is the responsibility of the nation-state then to assuage alienation and enable conditions for reconciliation by providing free and fair justice as well as a stake in governance. While conducting studies on Sikh extremism, sociologist Deepankar Gupta found that “to a large extent the voice of terrorism was being deciphered only by those who felt that the state was no longer the fount of the law and an impartial arbiter.” Gupta feels that conflict between two parties can be restrained by the legal and judiciary system. When this system fails then such disputes cannot arrive at a reasonable conclusion. “From then on you only have the inarticulate ‘cry’ of the terrorist.”

Succinctly, to sustain democracy, a nation-state requires a strong neutral legal and judiciary system—a system that generates faith thus having a capacity to restrain contesting groups and keeping their vested interest under control. Till now, with whatever shortcomings that the Indian judiciary and legal system have shown, it has been able to retain faith of the people. This faith, however, appears to be wilting. A weak judiciary is a threat to democracy as it opens other avenues for settling scores, putting at stake the interest of the nation. Need is to insist and ensure that justice is delivered to all including the minorities in accordance to the Constitution of India over-ruling shadows of religion and politics. Only a strong legal and judicial system will rejuvenate the trust of the citizens on Indian national institutions, with a high possibility of reducing communal tensions and riots.

### **Musings of a Now Hardened Agnostic\***

As neither a Hindu nor a Muslim, but, rather, now a hardened agnostic who suspects there is an invisible force behind the universe but is fully distrustful of all religions, I could not be bothered in the least if a temple or a mosque or a profane structure—or, indeed, nothing at all—is now

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\* Yoginder Sikand, Countercurrents.org, 1 October 2010

to occupy the disputed spot in Ayodhya. As far as I know, the force that I want to believe exists and pervades the entire universe and beyond is supremely indifferent to who the new owners of the contested spot are to be. This force knows no distinction of religion, caste, nationality, gender, sexual orientation, and so on and so forth. For all I care, you can smear your head with ash and fall flat in front of the toy-like idols that now stand on the disputed spot and mumble mantras in incomprehensible Sanskrit, or you can don a skull-cap and bend and bow while muttering phrases in Arabic of which you understand not a word if the mosque that once stood on the spot is reconstructed. The universal force I sort of suspect exists is, I know, supremely unaffected by what you do on that measly bit of earth.

That said, I must confess that the judgment of the Allahabad High Court on the Ayodhya imbroglio struck me as deeply disturbing, to put it very mildly. Numerous critics have argued that the Court appears to have accepted the claims of Hindus who share the RSS vision of the world as normative and historically valid, and to have been guided by these possibly wholly untenable claims in making whatever decision it did. That this logic bodes ill for the future of secular democracy in India is a complete understatement. As a friend of mine, a fellow agnostic, brilliantly expressing my own reaction to the judgment, quipped, 'Are we now to be governed by Hindu *shariah*?'

At the same time, however, I must also confess my immense relief at the Court turning down the claims of the Sunni Waqf Board, not because I believe that the Board's stance is wholly without any merit at all, but, rather, simply because had the Court favoured the Board (which is what many of my Muslim friends had rather naively expected) it would certainly have provoked Hindu hordes into unleashing yet another massive reign of terror against hapless Muslims all across the country. Had the Board been declared as the rightful owners of the contested site, rebuilding the Babri Masjid, which is what the Board has been demanding all along, would inevitably have had to entail demolishing the make-shift temple that was hurriedly set up on its ruins in 1992. And that would certainly have been at once pounced upon

by Hindu fanatics as an excuse to whip up anti-Muslim violence on a scale hitherto completely unprecedented.

This is why I think the move on the part of some Muslim outfits (who never tire of falsely claiming to represent all the Muslims of India—this being as horrendous a lie as the Hindutvawadis' claim that they speak for all Hindus)—to approach the Supreme Court for redress is, I believe, sheer idiocy. Supposing the Supreme Court overturns the Allahabad High Court's ruling and decides that ownership of the contested space in Ayodhya be granted entirely to the Sunni Waqf Board, as the Board hopes it will. What then? Is it at all conceivable that the Board can actually begin building a mosque on the disputed spot, even if this—miraculously, for there can be no other way—does not involve tearing down the make-shift temple that presently stands there? The spot, the mullahs and the other ignoramuses in the Board and the Babri Masjid Action Committee must surely know, is not somewhere on the outskirts of Mecca-Medina or in the hills of Tora-Bora in Afghanistan, where the task could have been easily accomplished and no opposition would have been brooked. I dare say that not a single of the self-styled Muslim leaders spearheading the movement for rebuilding the Babri mosque would, for all their foolhardy, rabble-rousing rhetoric, be so bold as to venture even a hundred miles from Ayodhya leading a team of zealous 'mujahideen' to restore the mosque even if the Supreme Court were to rule in the Board's favour. Not one of them would, I bet, be so eager for martyrdom. The tryst with the hour is that they believe are promised to *shabeeds* can wait for a bit more, I am sure they feel.

To come back to the High Court's judgment, although, as I said, I find it, to put it mildly, disappointing in a very fundamental sense and cannot help disagree with the logic that informs it, its recommendation that the contested space be shared by Hindus and Muslims (although disproportionately) is, I must admit, hugely compelling and entirely welcome—simply for the symbolism of it. I have absolutely no idea as to how the two are going to arrange for this to actually happen. I suspect this will not be at all easy, particularly given the Hindutva fanatics' dreams of constructing what they repeatedly term as a 'really grand

temple' on the spot, a prospect that would not exactly inspire Muslims with confidence to build, and worship in, a mosque in its shadow. But, anyhow, as far as I am concerned, as I said at the outset, while some Hindus and Muslims will continue to believe that occupying that particular piece of ground in Ayodhya and knocking their heads on it in prayer is of immense, indeed cosmic, significance, I am confident that the force that pervades everything knows otherwise.

### **Verdict is a victory for Sangh Parivar\***

The Aodhya verdict is the finest feather in the Sangh Parivar's crown of communal conquests.

The victory of faith over law is how the Allahabad High Court's verdict in the Ramjanmabhoomi-Babri Masjid title suit is being simplistically interpreted. But it is much more than that. It is essentially the victory of majoritarianism; the triumph of the faith of the vocal, brute majority in the cow belt over all tenets of the law. It is the judicial stamp of approval of the militant mobilisation of the masses in the name of faith, fashioned by a political agenda that reeks of riots.

The verdict has inadvertently legalised and sanctified two acts of illegality of the parivar: The act of trespass in the intervening night of December 22 and 23, 1949, which is not even investigated and proven, and the destruction of the mosque on 6 December 1992. Worse, the verdict gave away the most important piece of the disputed property, the spot where the central dome of the mosque once stood, to an RSS pracharak, Trilokinath Pandey, who claims to represent the deity, Ram Lalla Virajman.

### **Faith**

An article of faith for the cow belt could be a cause for benign humour in beef-eating Kerala or Tamil Nadu. M Karunanidhi, the shrewd Chief Minister of Tamil Nadu perceived the sethusamudram dredging project more important to his electorate than the mythical bridge that Ram's monkey army built across Palk Strait, or else the sensible old man would

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\* Rajesh Ramachandran, *Mail Today*, 13 October 2010

not have let out a loud chuckle and asked for Ram's engineering degree to prove the antiquity of the Adam's bridge between Tamil Nadu and Sri Lanka.

So even the 'faith', the great mythology of Ram, is not an all pervasive, all encompassing, monolithic, pan Indian phenomenon. Sure, the genesis of the present title suit between the Nirmohi Akhara and the Sunni Wakf Board can be traced back to a case in 1885. But nobody can contest that the 'faith or belief' of the birth place of Ram was reaffirmed by the Sangh Parivar's mass movements launched after the Rajiv Gandhi Government let the locks of the masjid be opened in 1986. Interestingly, the greatest Ramayana of the hindi-speaking people, Tulsidas' *Ramcharitmanas*, believed to be written after the Babri Masjid was built, is silent on the issue of the 'belief' of a grand Ramjanmabhoomi Temple getting razed by Babur's general Mir Baqi or his soldiers to build the masjid. Tulsidas never sang about liberating his dear Ram Lalla nor did he sanctify the exact spot where the baby god was born and nursed by queen mother Kausalya.

The 'belief' about the place of Ram's birth was first asserted when some unknown persons illegally 'placed' the Ram Lalla's idol under the central dome of the masjid in December 1949. It cannot be a mere coincidence that the then deputy commissioner KK Nayar who let the act of illegality happen, and refused to remove the idol despite a letter from the then Prime Minister Nehru, after retirement, joined the Jan Sangh and was elected to the Lok Sabha from a parivar ticket in 1967.

In 1989, the year in which the Rajiv Gandhi Government allowed the *shilhanayas* or the foundation stone laying ceremony for the rebuilding of the Ram Temple at the Babri Masjid site, Deoki Nandan Agarwal, a retired judge of the Allahabad High Court impleaded in the case claiming to be the Ram Lalla's '*sakha*' or close friend.

### Crime

The court admitted his plea despite Agarwal being a Vishwa Hindu Parishad vice president. Since then representatives of Ram Lalla have been parivar activists and the courts never found anything odd with it.

Shockingly, the court neither ordered the removal of the idol that

was 'placed' in 1949 in a place of worship of the muslims nor did it find anything amiss in letting an organization that aims to politicize the dispute be a party to the title suit.

Soon L K Advani did what Tulsidas did not do. He started his Toyota *rath* in 1990 from Somnath to Samastipur to avenge the medieval hurt of the mythical hero by propagating the 'faith or belief' of the birth of Ram exactly under the central dome of the Babri Masjid. as the *rath yatra* crossed the Hindi heartland empowering the BJP in state after state, the nation's heart bled. The campaign to restore Hindu national pride by subjugating a group of fellow citizens unfortunately found an echo among the north Indian Hindu masses, who in turn voted for the BJP. When the hindutva mob finally brought down the Babri Masjid in 1992 there were riots all over. The serial bomb blasts in Mumbai in 1993 began a new era of communal violence that continues even today. Why even the Gujarat riots of 2002 that took a toll of about 1500 muslims could be traced to the perceived attack on karsevaks returning from Ayodhya.

The verdict did not spare a moment's thought to all these criminal actions that happened over the masjid, while the court was still deciding the title suit.

Obiter dicta, latin for casual remarks or observations, are the privilege of the courts that are allowed to digress and talk about almost everything under the sun. but the Allahabad High Court did not even make a casual indictment of the parivar or the people who permanently altered the shape and structure of the Babri Masjid in 1992. The three-way split of the land was made possible only because of the demolition of the masjid, yet, the court did not find anything wrong with the act of demolition.

### Maturity

After Jinnah's murderous direct action day of 16 August 1946 most of the post-Partition riots in the country were organised, according to various commissions of enquiry, by hindutva elements. So, no wonder the nation heaved a collective sigh of relief after the verdict. The majority opinion mobilised by the Sangh parivar had won.

But it defies reason why many observers defined the Muslim reaction to the verdict as 'mature'. The sad resignation of a minority community to the loss of a piece of land where a mosque once stood cannot be termed maturity. Sure, the community is mature enough to know that it hurts to agitate and that any movement for the masjid now will only politically benefit the parivar. Yet, it hurts to accept that the majoritarian faith and not the law has prevailed.

One mosque won or lost is not important, but the faith in judiciary is. The Supreme Court should restore the nation's faith in law and not in the folklores of a community propagated by a political party that has used it specifically to gain power. The Supreme Court should also review the propriety of the parivar representing Ram. If at all anyone deserves to be called a '*sakha*' or a true and close friend of Ram, it was the man who was brutally murdered by Nathuram Godse, a former RSS activist, and he would not have approved of this verdict.

### **The Mask is Off**

This note is an expression of the shock and disappointment that assailed large sections of Indians in the aftermath of the Ayodhya verdict. The judgement of the Honourable Allahabad High Court appears to be a clean break from the secular traditions of India, where a judicial body has openly intervened on behalf of the people of a particular religious faith and has failed to uphold its role as that of a rational, impartial arbiter.

The land suit in question appears to have been decided on the basis of faith rather than of fact. The judgment has erroneously concluded that Ayodhya was the birthplace of the Hindu mythological character, Ram, because Hindus believe so. The Court has delved deep into the evidence placed forth about the fact that Hindus believe Ayodhya to be the birthplace of 'Lord Ram' and has concluded that thereby Lord Ram was born in Ayodhya, effectively converting mass belief into a fact, in defiance of logic. This conclusion appears to be all the more absurd in

the absence of evidence to prove that Lord Ram was actually a historical character and not just a mythological one. The Court appears to have flirted extensively with theology while choosing not to dwell upon the legal aspects of possession and adverse possession of the land concerned. If the judgment had been based exclusively on legal tenets, which is what one expects from the judiciary of a democratic nation, the judgement would have swung the other way because since the Mughal period, the so-called disputed land has housed a mosque.

The court has needlessly delved into the question of whether the said place of worship was used regularly or not, ignoring the fact that in 1949, Hindu fascist groups forcibly entered the mosque, placing Hindu idols in it and thereby creating a 'dispute' which prompted the government to lock the premises, declare the matter sub-judice and prevent Muslims from offering prayers therein. Besides, the act of placing idols within the precincts of the mosque was considered an act of desecration of their holy place by Muslims. Not once has the court condemned the act of illegality that took place in 1949. Instead, it set upon itself the task of correcting historical wrongs, dating back to the pre-Mughal period, based on a flawed ASI report that has been discredited by reputed historians the world over. Such flagrant interventionism on behalf of a powerful segment of the Hindu populace has ripped the mask of secularism off the judiciary's face. We would also like to add that the principle of 'superior fundamental right', as espoused by Justice Sharma to rule that Hindus have a superior right of worship at the concerned spot, appears to have been gravely misinterpreted in this case. The legal precedent set by this judgement has only given birth to a hornet's nest and legitimised the ascendance of faith over reason, of politics over justice.

The grief and bewilderment caused by the political judgement will only foment a lingering sense of injustice among the minority community, which has been treated contemptuously and has been parcelled out a third of land, almost as if it were being given gratuitously. The most distressing part of the judgement is that while the court has taken upon itself the mission of setting right ill-documented and doubtful historical

wrongs, not once has it condemned the criminal act of demolishing the Babri Masjid, perpetrated by right-wing Hindutva factions, under the guidance of leaders of national stature and reputation. It appears that truth and justice have been the chief casualties of a misguided attempt at reconciliation.

### **Ayodhya: Burial of Justice\***

What better place than the grave of a mosque could a 'secular democracy' find to bury justice? Numbness was the first response to the verdict on Ayodhya dispute. Everything and everyone went numb. And then, an eerie silence settled in the room where we were anxiously watching the live streaming of Indian news channels, 5000 miles away from India. We were six, four Sri Lankans and two Indians. It is like one of many judgments by Sarath N Silva, said Basil Fernando, a reputed Sri Lankan crusader for human rights and rule of law. He was referring to many controversial and unjust decisions delivered by Silva as Chief Justice of Sri Lanka. Listening to the sadness pervading his voice, I remembered his recent article where he has referred to another recent decision of the Sri Lankan Supreme Court as 'death of democracy'.

Numbness slowly gave way to an animated debate on the merits (rather, lack of them) of the decision. I was, however, far away from that debate and my thoughts were taken over by this haunting idea of 'death of democracy'. Is this the beginning of the end? Is it the death of democracy? Or is it that of justice?

Thinking of death dragged me to another creepy domain of burial. Can we bury anything anywhere was the question that preoccupied me now. No, a definitive no, was the answer that then presented itself to me. All societies look for the most sacred place for burial grounds as a matter of fact. After all, one does not belong to a land if s/he does not have someone buried under the ground, said Marquez in *One Hundred Years of Solitude*. Death gives one memories, the basic prerequisite for

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\* Avinash Pandey Samar, Countercurrents.org, 13 October 2010

the sense of belonging. For this reason, burial grounds have not only been sacrosanct but most sacrosanct of the lands.

But then, what if the death is of justice itself? Which cemeteries would be sacred enough to bury justice? None of the regular ones, I am sure. The country would need a new one for that.

The verdict of Allahabad High Court has not let us down in that. After all, what better place than the grave of a martyred mosque could the judiciary of a secular democracy have found to bury justice?

The verdict has ensured the completion of the saffron project, a project which saffron terrorists have miserably failed to achieve for the last 18 years. All they could achieve then was demolishing an old building and nothing more. Everything else, from the cultural harmony called as '*gangajamani tahjeeb*' to justice, remained intact. Not that, they did not try. They tried their best. They converted matadors into some strange things and called them chariots. They got many people making bricks and called these bricks 'ramshilas'. Then they took these chariots and bricks on a tour of India leaving a trail of blood behind. Nothing of this was strange though. What else can one expect from those who sow 'branches' instead of 'trees' as one Hindi writer has put it long ago?

They also tried to convert men, ordinary men, into Hindus and somewhat succeeded as well. They could fulfil one of their dreams of occupying power in Delhi.

Even while shedding crocodile tears about abdication of the duties of a king (*rajdharm*) by their Chief Minister in Gujarat, they were supervising butchering of 2000 Muslims, some still in wombs, literally. They were convinced that they were unstoppable. In their delusions, they were assuring each other of the imminent takeover of Delhi on their own, without the crutches and constraints of a coalition.

They could see their '*Hindu rashtra*' taking shape in the delusional magic mirrors that they carried in secret. They could hardly conceal their smiles, proverbial smiles of the murderers. Then came the elections. They found their dreams shattered, and their hopes smashed by the country barring Gujarat. The people of the country held the horses running for building a Hindu nation by their reins, stopping the chariots in the middle

of its track. Their bricks left stacked in one obscure corner of Ayodhya, unused. They brought both the horses and the riders down and reaffirmed that we are a living nation with firm belief in our core values.

Justice and peace, both, have survived the frontal onslaught. The electoral demise of saffron fanatics has reassured the people that the courts would stand by the high ideals of justice. That whenever a verdict would come, it would be just and honest. The saffron terrorists have feared this predicament too. So, one used to have one or the other of their folks threatening the nation every other day. They used to shout at the top of their lungs that they would not listen to any courts on this issue of 'faith'.

How could they know that the court was going to complete their unfinished agenda? How could they see the Hindu heart tucked safely behind their black courts? How could they know that the judges would be able to determine the birth place of lord Ram with the precision of square feet? They could not even suspect that the judges would be able to create a juridical person out of someone who is not even a 'historical person'. They never knew that all their fears were unfounded and that the judiciary would be complicit with them. Even in the wildest of their dreams they could not have imagined that the verdict would prove to be a classic case of infusing myths with new and distorted meanings.

Intriguingly enough 'evidence' used by the judges to reach the conclusion was far more interesting than the actual decree. In basing their judgment on the 'faith and belief' of millions of Hindus, the judiciary has trumped even the most ardent of Hindu fanatics. What the judges did not tell, however, was the question that how they came to know of this 'faith and belief' with this conclusive conviction? Who are these Hindus? Where do they live? Did they send post cards to the judges telling them about their faith and belief? Or, did the courts organise some sort of referendum or even opinion poll? We did not get to know any of them. Though we kept seeing the Bhartiya Janata party, and its saffron agenda, getting rejected by millions of Hindus elections after elections. The only possible inference that could be drawn from these elections was the exact opposite of what the judges did. The election

results symbolised the rejection of the sectarian agenda of the party and its tall claims of being representative of the Hindus. They proved that the saffron brigade raked this issue time and again for votes and nothing else and failed tremendously in that.

Has the court invented some different Hindus? In the Brechtian lingua franca, he spells out beautifully in one of his poems, "The people have lost the confidence of the government; the government has decided to dissolve the people and to appoint another one". Did the court really find some new Hindus none else could find?

And if the judges were to follow Hindu beliefs only, how could they decide to pick and choose just this one? There are many other beliefs shared by millions of Hindus, like the one amply demonstrated by the kangaroo courts of Haryana called 'khap panchayats'. The belief that marrying out of one's own caste is a 'criminal' act and deserves no punishment less than a brutal barbaric killing! Maybe the court should withdraw all the cases against those who killed couples while upholding this 'belief' and faith of Hindus. It should even institute some award like 'pride of the Hindus' and confer it upon those killers.

The court should also legitimise caste based discrimination as it emanates out of one of the oldest 'beliefs' of Hindus and is sanctioned by Hindu scriptures. After all, the Hindus believing in caste should definitely outnumber those believing in Ram temple and so this action would serve the cause of the Allahabad High Court model of justice more than anything else. The court should also direct the government of India to scrap all anti-caste provisions of the Indian constitution and make not believing in caste a 'criminal offence'.

The court should direct the saffron brigade to start demolishing rest of the places of worship belonging to the minority religions (not that they need any such directive! They have already burnt/demolished many of the churches in Odisha and Gujarat). This would help the courts being able to give at least a third of all these lands to Hindus. After all, it's a question of belief of millions of Hindus, nothing less. The court could very well begin with Kashi and Mathura, the remaining two on the main agenda of the RSS, BJP and their hydra-headed

monsters. The court can also direct the Government of India to initiate the process of declaring India as a Hindu state, even if there is no sizable section of Hindus in India demanding this. But then, there was no sizable voice of Hindus believing in Ram janmbhomi either! And maybe, the world needs a 'Hindu Rashtra' especially after the demise of Nepal as one!

Meanwhile, all of us who are not Hindus or Muslims, but citizens first, should start the process of giving a tearful burial to the idea of justice. Justice and democracy was the most defining characteristics of our nation. All our claims of being the biggest democracy of the world, and being the only one in the region not to collapse in military dictatorships were based on that premise. The proud claims of being a 5000 year old civilisation rested on that very idea as well. Sad that the justice is no more, but then what better place than the grave of a mosque we could have got to bury it in this secular democracy? The grave of a mosque demolished by criminals in saffron on top of that!

### **Faith Fact and the Law in Ayodhya: An Appeal in the National Interest\***

Most people believe that there is a divine law, the details of which are a matter of faith, since the existence of each person's God can neither be proved nor disproved. One can only pray, "*Ishvar-Allah tero naam, sab ko sanmati de bhagawan*" for communal harmony and peace. But why discuss this now? The reason is the troubled Ayodhya Babri mosque-Ram janmabhoomi issue that has come to a critical juncture with the split Allahabad High Court verdict of 30 September 2010.

Matters of faith are not justiciable. The hindutva groups, inaccurately claiming to represent all Hindus, aver that the precise spot of Ram's birth is under the dome of the Babri mosque. One needs to distinguish between the general area of Ayodhya where Ram is believed to have been born, and the precise geographical spot of Ram's birth. Most Hindus revere Ayodhya and indeed there are several temples in

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\* S G Vombakere, Countercurrents.org, 18 October 2010

Ayodhya, each of which claim to be Ram's birth-place. Obviously there can be no rational method to identify the precise spot after several lakh years. But the Hindutva groups, arguing that it is a matter of faith which is outside the purview of the law, demand that the disputed site be handed over to them for construction of a Ram temple.

When the courts granted a small sum of maintenance money to Shah Bano in 1985, Muslim clerics raised a furore claiming that it violated Islamic faith. The All India Muslim Personal Law Board insisted that faith takes precedence over law (faith-over-law). In an act of unprincipled vote-bank politics, the then Union government reactively enacted the Muslim Women (Protection of Rights on Divorce) Act, which put Muslim women outside the purview of Section 125 of the CrPC. The secular Muslim voices and Muslim women's protests opposing the Bill were suppressed by the power-hungry Muslim clerics, to whom the faith-over-law argument was an important tool of control over the Muslim masses. Thus the Muslim clerics not accepting the Hindutva groups' faith-over-law argument is strange. However, if the Muslim clerics now demand law-over-faith, then they should also accept Common Civil Law rather than insist on Sharia Law for Muslims. The Muslim clerics' shaky position stands exposed.

The question whether these Muslim clerics really represent all Muslims is quite as pointed as whether the Hindutva groups represent all Hindus. Therefore from the faith point of view, the Babri mosque land ownership dispute is essentially between the Hindutva groups and Muslim clerics, and not between Hindus and Muslims per se. The faith-based arguments of both sides are unsound; a judicial decision on ownership of the disputed site on the basis of faith amounts to personal beliefs and biases of the learned judges.

Now let us examine the factual aspect of the issue. The Babri mosque was constructed in 1528 and was in use for worship, while Hindus worshipped at the Ram Chabootra within the mosque compound 'in a spirit of mutual communal goodwill'. For various historical and political reasons, that goodwill has all but disappeared. The Hindutva groups contend that a Hindu temple was demolished to construct

the Babri mosque. In order to determine whether the Babri mosque was built over a Hindu temple, the Court ordered the Archaeological Survey of India (ASI) to investigate by excavation. The report that ASI submitted to the Allahabad High Court in August 2003 concluded that a "massive Hindu religious structure" existed below the mosque. The report was criticized both on bases of fact and conclusions by professional archaeologists some of whom witnessed the excavations and others who studied the report. Whether or not this criticism was correct, the fact is that the original diaries of the excavations are not being made available for informed discussion, giving rise to serious doubts about the veracity of the report. In fact, even the court was divided in its opinion whether the pre-existing structure reported by ASI was Hindu, Jain or Buddhist, and whether it was demolished to construct the mosque or was already a ruin. In any case, no historical documentary proof to show that a Hindu temple was demolished to construct the Babri mosque has come to light. In balance, no impartial observer would accept that the construction of the Babri mosque involved demolition of a pre-existing Hindu temple.

However, historically there are two dates that are established in the Court. One, the night of December 22-23, 1949, when the idols of Ram were surreptitiously installed inside the Babri mosque; and two, the deliberate demolition of the Babri mosque on 6 December 1992. Both these acts were illegal. So where do we go from here?

The Hon'ble courts may adopt the faith-over-law basis and thereby violate the secular character of the Constitution. Or they may take the legal basis. Regardless of the basis of judicial deliberations, any ruling that grants title to one or other parties to the dispute will surely result in appeals upto the court of last resort, namely, a full bench of the Hon'ble Supreme Court of India. And its "ultimate" decision in favour of one or the other, binding on all citizens of India, cannot but cause heartburning, violence and mayhem, howsoever unjustified, and loss to the nation. Such a decision cannot be in the interest of communal and general peace in India.

It is axiomatic that only peace can bring prosperity. Any decision

on the Babri mosque issue that does not bring peace and harmony between Hindus and Muslims cannot be in the national interest, regardless of historical blunders and past judicial and political decisions. The judiciary and the political class will both surely understand this fundamental truth. The obvious peace-based solution is for both the political class and the judiciary to declare the 2.7 acres disputed site and the 77 acres surrounding land under government custody as a "common ground" for both Hindus and Muslims or declare it as an inter-religion *sarvadharmā sthal* or as a national monument for communal harmony. This will surely be acceptable to all Hindus and all Muslims who are stakeholders for peace and harmony, and who condemn the conflict and violence being manufactured by the Hindutva groups on the one hand and by the Muslim clerics on the other.

## Appendix - A

# Statements on Ayodhya Verdict

### **Safdar Hashmi Memorial Trust**

The judgment delivered by the Lucknow Bench of the Allahabad High Court in the Ram Janmabhoomi-Babri Masjid Dispute on 30 September 2010 has raised serious concerns because of the way history, reason and secular values have been treated in it.

First of all, the view that the Babri Masjid was built at the site of a Hindu temple, which has been maintained by two of the three judges, takes no account of all the evidence contrary to this fact which was turned up by the Archaeological Survey of India's own excavations: the presence of animal bones throughout as well as of the use of 'surkhi' and lime mortar (all characteristic of Muslim presence) rule out the possibility of a Hindu temple having been there beneath the mosque. The ASI's controversial report which claimed otherwise on the basis of 'pillar bases', was manifestly fraudulent in its assertions since no pillars were found, and the alleged existence of 'pillar bases' has been debated by archaeologists. It is now imperative that the site notebooks, artefacts and other material evidence relating to the ASI's excavation be made available for scrutiny by scholars, historians and archaeologists.

No proof has been offered even of the fact that a Hindu belief in

Lord Ram's birth-site being the same as the site of the mosque had at all existed before very recent times, let alone since 'time immemorial'. Not only is the judgment wrong in accepting the antiquity of this belief, but it is gravely disturbing that such acceptance should then be converted into an argument for deciding a property entitlement. This seems to be against all principles of law and equity.

The most objectionable part of the judgment is the legitimization it provides to violence and muscle-power. While it recognizes the forcible break-in of 1949 which led to placing the idols under the mosque-dome, it now recognizes, without any rational basis, that the transfer put the idols in their rightful place. Even more astonishingly, it accepts the destruction of the mosque in 1992 (in defiance, let it be remembered, of the Supreme Court's own orders) as an act whose consequences are to be accepted, by transferring the main parts of the mosque to those clamouring for a temple to be built.

For all these reasons we cannot but see the judgment as yet another blow to the secular fabric of our country and the repute of our judiciary. Whatever happens next in the case cannot, unfortunately, make good what the country has lost.

### **Resolution by Concerned Citizens, Mumbai\***

We condemn the judgment of the Allahbad High Court dated 30 September 2010 in the title suit of Babri Masjid–Ramjanmabhumi case as a judgment based on faith, conjectures and surmises about faith based on only one section of the Hindu community. We are convinced that the judgment is bad in law and not in consonance with the settled law of the land. Basing the judgment on faith has far reaching consequences for secularism, which forms the basic structure of our Constitution, and for rule of law. The judgment will set a bad precedent. The judgment should be appealed against before higher judiciary and available legal remedies should be availed. Concerned citizens and groups working on

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\* Resolution adopted at a seminar organized by the All India Secular Forum in Mumbai on 2 October 2010

issues of secularism, democracy and rule of law should intervene and make their standpoints heard by the judiciary if an appeal is filed against the judgment of the Allahabad High Court.

### **Communist Party of India (CPI)**

The Central Secretariat of the Communist Party of India congratulates the common people of the country for their show of exemplary maturity and sense of responsibility in the wake of the pronouncement of the verdict by the Lucknow Bench of the Allahabad High Court in the six-decade-old title deed case of the disputed land in Ayodhya. The peace and calm maintained by the people must be preserved and should not be allowed to disturb communal harmony either in the name of celebrating the victory or for launching protest agitation. We must remain vigilant about this.

The Allahabad High Court judgment based more on faith and religious belief than the basic tenets of history, archeology, legal logic and historical facts of other streams of scientific knowledge, can spark a debate on the jurisdiction of the Courts.

The Central Secretariat of the CPI firmly believes that there are enough legal avenues for the people who feel aggrieved. The road to Supreme Court is open. In this case also, the redressal of grievance or affirmation of validity of judicial pronouncement should strictly remain within the confines of judicial procedure.

### **Communist Party of India Marxist (CPM)**

Senior CPM leader Subhashini Ali has termed the Allahabad High Court verdict in Babri Masjid title suit as one that has struck at the core of the Constitution and rule of law. She said the verdict must be challenged in Supreme Court not for a piece of land but in fact to ensure the rights of citizens.

“I am an atheist and completely horrified by the High Court judgment which strikes at the core of the Constitution and rule of law. The premises of the judgment are completely irrational and absurd. This judgment is a threat to the future of India and to the equality and rights

of its citizens. It must be challenged in the Supreme Court not just for a piece of land but to ensure all of our rights," said Ali.

She rejected suggestions for compromise on the issue.

"Those who are advocating 'compromises' do not understand that it is not land that will be surrendered but the basic and essential principles of equality before law and the fact that the Constitution and its guarantees cannot be compromised in the name of 'faith'" she added.

### **Communist Party of India (Marxist-leninist)-liberation**

On the eve of the Allahabad High Court verdict on Ayodhya, we had said the verdict would be a "test case for India's secularism, democracy and justice." Now, following a close look at the shocking verdict, we must say it has failed this test in every possible way. 30 September 2010 will now be bracketed with 6 December, 1992. Eighteen years after the dastardly physical demolition of the Babri Masjid, we have now seen its judicial demolition, a verdict that flies in the face of the basic principles of justice and rule of law, and challenges the fundamental spirit of a secular, democratic modern India.

The High Court was supposed to decide on the title suit regarding the disputed site. It is well known that the BJP and its Sangh siblings were all along wary of the court deciding on this case on the plea that the whole issue concerned "faith" and there could be no adjudication over "faith". It was clear to them that they had no legal basis for their claim and hence they chose the way of cheating the country. They assured everybody that the law of the land would be honoured, and then betrayed their own words to demolish the mosque through a communal-fascistic mobilisation in broad daylight.

Today, the Sangh is jubilant that the High Court has turned "faith" into law. All the three judges have accepted the fact that the idols of Ram, Sita and Bharat were smuggled in from outside on the intervening night of 22-23 December, 1949. Yet the judges have ruled by 2-1 majority that the "disputed structure" was not a mosque because it was apparently constructed by demolishing a Hindu religious structure and hence according to the tenets of Islam, it could not have the sanctity of

a mosque! The other judge has of course differed on both counts—but the majority view prevailed.

The verdict is based heavily on two factors—the so-called ‘archaeological evidence’ marshalled by the ASI in its 2003 report (two previous ASI reports in 1970 and 1992 mentioned nothing of the sort) that there was a Hindu temple on the site before the mosque was built, and the ‘faith’ held by many Hindus that the disputed area is the birthplace of Lord Ram. The ASI report has been widely questioned and rejected by a whole range of historians and can at best be treated as a piece of speculative conjecture. The other aspect of ‘faith’ is just that—faith which can by no means be treated as an evidence to decide a title suit.

After conceding the Ramjanmabhumi claim on such thoroughly questionable grounds, the judges sought to give the whole thing the appearance of a reconciliatory measure whereby the disputed land would be apportioned into three equal parts with one part going to the Wakf board. Reconciliation can only be attempted and achieved on the basis of truth and justice. In this case, both truth (at least recorded historical truth) and justice have been sacrificed at the altar of this phoney reconciliation formula and hence it is a compound travesty of all three. Can there ever be a dignified compromise by compromising truth and justice?

After Gujarat genocide, the BJP had been steadily losing ground in most parts of the country. Ever since its debacle in the 2009 Lok Sabha election—its second successive defeat in five years, the party seemed virtually clueless as to how to arrest its continuing state of demoralisation and desperation. Now the Allahabad High Court verdict has breathed some fresh life into the demoralised and desperate saffron camp. Advani has already described the verdict as heralding a new chapter in the country’s history of national integration. In all likelihood, an emboldened BJP will now reopen the whole gamut of its ‘suspended agenda’ and refuel its Hindutva campaign.

The judicial trajectory of the case will now reach the Supreme Court. It remains to be seen if and how far the Supreme Court can salvage the spirit of law and justice and heal the post-Ayodhya wound

on the body polity and the composite culture of the country that has only been rendered deeper and more acute by the Allahabad High Court verdict. Every effort must be made to make sure that the glorious tradition of India's composite culture and the secular democratic vision of modern India prevail over the Sangh brigade's conspiracy to redefine India on retrograde majoritarian lines.

### **National Campaign Committee**

A legal dispute about the title to a piece of land in Ayodhya had its origin in the surreptitious and majoritarian high-handedness encouraged by the biased local authorities. After decades of hibernating litigation, the issue was brought into highlight by the obscurantist mob of the Hidutva politics. Adroit and diabolical political moves by the BJP to regain its political relevance after the rout in the mid-nineteen eighties centred around the issue.

The Congress too reacted to this in an opportunist and short-termist perspective, further muddying the political scene. As a result, the issue got catapulted into the politics of majoritarian mass frenzy which led to the destruction of the Babri Masjid. Even worse, it seemed that the political process would get pushed back by decades into the communalist and divisive mode. The people of India, however, showed tremendous maturity and strove to restore the secular, democratic fabric of the polity.

### **Meeting of Concerned Citizens, Delhi\***

The judgments of Justice DV Sharma and Justice Sudhir Aggarwal are based on language and arguments which effectively and dramatically invert the principle of a secular state, which subordinates faith to law, by making the law subordinate to faith. The non-secular, nay, anti-secular idiom of the judgments of the two judges is deeply disturbing.

The meeting was of the opinion that the verdict constitutes a dangerous precedent, which can be used against other vulnerable groups in

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\* Resolution was passed by concerned citizens, academics, writers, lawyers, social workers at a meeting held on 15 October 2010 in Delhi

future, like dalits, tribals and women. For almost 500 years, Muslims had worshipped routinely in the Babri Mosque, while Hindus worshipped at the Ram Chabootra in the open area adjacent to the mosque, in a spirit of mutual communal goodwill. The disputed claim of Hindus to the land on which the mosque stood is based on naked aggression from 1949 to 1992. With this judgment, the movement which challenged India's secular Constitution and took hundreds of lives, and fostered fear and hate was rewarded.

This movement demanding that a grand Ram Temple should be built on the site in Ayodhya where the Babri Masjid stood, is often understood to be a clash between the Hindus and Muslims. The meeting affirmed that there is indeed no such clash, and there never has been. It has always been a dispute between the two alternate visions of India; between Hindutva and secularism; between a minority of persons unreconciled to the secular democratic idea of India, and the majority of Indians of every faith who believe in and live this idea.

The judgment reopens again the question about the terms on which people of minority faiths would have to relate to cultural domination of the religious Hindu majority. In effect, it interrogates the guarantees of the Indian Constitution, which pledged equal rights and equal protection to all persons, regardless of their religious faith. Both in the courts of law, but more importantly in the arenas of society and polity, the meeting resolved to battle for the restoration of the values of the freedom struggle, and the Constitution which the people of India gave themselves.

## **Anhad**

The renewed litigation, now expedited and also broadened in its scope, apparently helped to keep the issue where it belonged, that is to say, outside the political process. But the judgment of the Lucknow bench of the Allahabad High Court delivered on 30 September 2010 seems to have brought the matter again into the domain of politics. The questions of faith and beliefs seem to acquire, in the view of the majoritarian politics, a judicial imprimatur. Similarly, some findings of archeology

and history, not always capable of neat and unanimous interpretations nor amenable to judicial dispensation, seem to get, in that view, underpinnings of judicial pronouncement. Anxiety and anguish seem to grip all those who expected that judicial pronouncement based on facts and law might disentangle the issue from the retrograde politics but find that the majoritarian and backward looking Hindutva forces are welcoming the judgment as vindication of their stance.

We share this anguish. We call upon all those who believe in the modern, secular, democratic and plural polity of India to remain steadfast in their dedication to the task of nation building. We call upon the people of India not to be deflected by the divisive forces inspired by the medieval ideas and ideologies. We call upon them to strengthen the forces of democratic movement which are very much alive to the danger of communal fascist forces and which are committed to a truly secular polity and state where all the citizens will enjoy equal rights.

## Appendix - B

# Chronology of Events

### Chronology of Events

The Babri Masjid is named after the first Mughal emperor Zahir-ud-din Muhammad Babur (1483-1530) who ruled India for four years from 1526 to 1530. He established the Moghul empire after defeating Lodis and taking over the Delhi Sultanate. Babar seems very truthful in jotting down what he did including his own violation of Islamic edict against drinking alcohol or shooting prisoners of war in his autobiography *Baburnama*. There is no reference to the destruction of any temple or building of the Babri Masjid in *Baburnama*. The mosque is said to have been built by one of his generals Mir Baqui. Given below is the chronology of events believed to have taken place:

- 1527-28:** The Babri Masjid is built by one of Babur's generals Mir Baqui. Hindus allege that the masjid was built at the birth place of Lord Rama by demolishing a temple.
- 1853:** First recorded incidents of communal violence at the disputed site take place.
- 1855:** The Hanumangarhi episode. Hindu-Muslim conflict as a consequence of an attempt by Muslims under the leadership of Shah Gulam Hussain to oust Hindu *Bairagis* from the

Hanumangarhi temple on the grounds that the temple had supplanted the mosque. The Muslims were defeated though the dispute was not over the Babri Masjid.

**1857:** Rebellion against East India Company defeated and India formally becomes a part of the British empire by a decree by Queen Victoria.

Maulvi Muhammad Asghar of the masjid submits a petition to the magistrate complaining that the *Bairagis* have built a *chabutara* (platform) close to the mosque.

**1859:** British officials erect a fence to separate the places of worships, allowing the inner court to be used by Muslims and the outer court by Hindus.

**1885:** Mahant Raghbir Das files a suit seeking permission to build a canopy on Rama *chabootra* (platform) but his plea is rejected a year after by the Faizabad district court.

**1886:** The *mahant* appeals again to the highest court in the province. The judicial commissioner dismisses the appeal of the *mahant* on 1 November 1886.

**1936:** An inquiry conducted by the then commissioner of Waqfs under the UP Muslims Waqf Act holds that the Babri Masjid was built by Babur who was a Sunni Muslim.

**1949:** Two years after India's Independence, an idol (Rama Lalla) is secretly placed inside the masjid on 22-23 December. Muslims protest and both Hindus and Muslims file civil suits. The government proclaims the premises a disputed area and locks the gates.

**1950:** The first title suit filed by Gopal Singh Visharad asking for the right to worship the idols installed at '*Asthan Janmabhumi*' (site of birthplace). The court restrains the removal of idols and allow the worship to continue.

The district collector of Faizabad, J N Ugra, files a statement in the court that the property in suit has been in use as a mosque and not as a temple. Ramachandra Paramhans files another suit, but withdraws it later.

- 1951:** The civil judge orders that the idols should remain.
- 1955:** The high court confirms the order of the civil judge that the idol should not be disturbed.
- 1959:** Nirmohi Akhara enters the fray and files the third suit, seeks possession of the site, doing away with the court-appointed receiver. It claims itself to be the custodian of the spot at which Rama was supposedly born.
- 1961:** UP Sunni Central Board of Waqf moves in to claim possession of the mosque and the adjoining land.
- 1984:** The controversy is brought to the fore when in the first '*dharma sansad*' (Religious Parliament) of Vishwa Hindu Parishad, a resolution is unanimously adopted demanding the 'liberation' of the site of the birth of Lord Rama.

Sri Ramjanmabhumi Mukti Yagna Samiti (Committee for Sacrifice to Liberate Rama's Birth Place) is founded under the leadership of *mahant* Avaidyanath.

The Committee launches a procession, which sets off from Sitamarhi in Bihar with the mission of liberating the temple of Ayodhya. This march reaches Ayodhya on 7 October 1984. It carries the idols of Rama and Sita in a large truck and shout slogan *Bharat Mata Ki Jai* (Hail Mother India!). Different sects of Hindus, traditionally opposed to each other, unite.

- 1986:** Umesh Chandra Pandey files an application in the court of Munsif (a judicial officer) seeking the removal of the restriction on *puja*. The application is turned down.

A large *sant sammelan* (gathering of Hindu holy men) is held. At the bidding of the Yagna Samiti, a Rama Janmabhumi Trust is founded, which calls on the government to transfer the property rights of Ayodhya site so that the biggest temple of the world could be built. Meanwhile, VHP organizes multiple campaign to rouse the issue.

- 1987:** On response to a plea, district judge of Faizabad orders opening of the locks of the masjid to allow *darshan*. Muslim community is not allowed to offer prayers.

The Babri Masjid Action Committee (BMAC) is formed, followed by the countrywide mourning by Muslims. Also, Sunni Central Waqf Board files a writ petition against the district judge's order.

Over 300,000 Muslims assemble at Boat Club, New Delhi, demanding handing over of the Babri Masjid. Soon after, a congregation of Hindus assemble in Ayodhya demanding the liberation of Ramjanmabhumi.

**1988:** The Babri Masjid Action Committee splits to form Babri Masjid Movement and Babri Masjid Action Committee.

**1989:** A *shilanyas* is performed and the foundation of temple laid; plinth is dug 192 feet away from the masjid amidst tense atmosphere.

A fresh suit is filed by former VHP vice-president Deoki Nandan Agarwala in the name of Lord Rama for declaration of the title and possession in its favour at the Lucknow bench of the Allahabad High Court. All the four suits, pending before a Faizabad court are transferred to a special bench of the Allahabad High Court.

VHP lays the foundation stone of a Rama temple on the land adjacent to the disputed mosque.

A coalition of the Janata Dal, BJP and the Communist Party of India forms a new government with V P Singh as PM.

**1990:** VHP and the Sangh Parivar threaten to storm in and build the temple. On 3 January 1990, a *sadhu sammelan* at Allahabad suggests that the mosque be shifted lock, stock and barrel.

Dwarka Shankaracharya Sampoornand Saraswati is arrested along with 10 followers, under Section 151 of the IPC on grounds of an apprehension of breach of peace by Mulayam Singh Yadav. Temples in Gujarat observe a *bandh* (strike) in protest.

Another attempt at construction of the temple is thwarted and 163 people are arrested in Ayodhya. On 9 May, the Shankaracharya is released.

BJP calls for a national referendum on Ayodhya, but VHP rejects it.

Muslim leaders reject VP Singh's offer to mediate. They suspect that the VHP will demand 'Garbha Gruh' under the arch of the masjid.

L K Advani proposes *rath yatra* (chariot journey) from Somnath in Gujarat to Ayodhya in UP. He chooses the route to touch many key centers such as Hyderabad, Indore, Delhi, Patna, Lucknow and finally Ayodhya. The VHP set the date of 30 October for the construction of the Rama Mandir, the very date on which Advani's *rath yatra* was supposed to arrive at the gates of the Babri Masjid.

Advani is not able to complete his *yatra* as he is arrested on his way on 25 October 1990 in Bihar by the government of Lalu Prasad Yadav. Many *karsevaks* assemble at the Babri Masjid site and try to damage the mosque.

**1992:** Nearly 300,000 *karsevaks* from all over the country assemble at Ayodhya. Despite a written undertaking to the court to protect the mosque by the BJP chief minister of UP, Kalyan Singh, the masjid is razed to the ground.

Days after demolition, communal riots claim more than 2,000 lives, mainly in Mumbai.

Justice Liberhan Commission is set up to inquire into the demolition within six months.

**1996:** Allahabad High Court clubs all civil suits.

**2002:** Allahabad High Court directs the Archaeological Survey of India to excavate the site to determine if a temple lay underneath. Three high court judges begin hearing.

**2003:** The ASI says there is evidence of a temple beneath the mosque. Muslims dispute the findings.

**2005:** Suspected Islamic militants attack the disputed site. Security forces kill five people.

**2009:** Some of the findings of the Liberhan Commission are leaked to the media. These leaked reports indicate the role of Bharatiya Janata Party (BJP) leaders like LK Advani and Murli Manohar Joshi in the demolition of Babri Masjid.

Liberhan Commission submits its report 17 years after it began its inquiry and after getting extension for 48 times.

**2010:** Lucknow bench of Allahabad High Court reserves its order on the suits, fixes 24 September for pronouncement of a verdict.

High court refuses to defer pronouncement of the verdict as pleaded by one of the parties R C Tripathi in the suit. Tripathi moves Supreme Court against the high court order. A bench of Justices Altamas Kabir and A K Patnaik refuses to take up the case.

Difference of opinion between the two Justices R V Raveendran and H L Gokhale crops up on entertaining the petition. Court issues notices to the parties. Supreme Court dismisses Tripathi's plea for deferment of the verdict which fixes 30 September for pronouncement of the judgement.

The Lucknow bench of the Allahabad High Court delivers its verdict by a majority decision, dividing the disputed land into three and handing each to the three parties, two Hindu and one Sunni Waqf. Of the three Justices, Sudhir Agarwal and S U Khan delivered the majority judgment. Justice Dharma Veer Sharma deemed all land should go to Hindus.

## Appendix - C

# Explanatory Notes

**BHAGWAN:** God

**BHARTIYA JANATA PARTY (BJP):** Potentially a ruling party. It was part of the Central Government from 1989-1990, when VP Singh was the prime minister, formed a government for a short time in 1996 and again from 1998-2004 with A B Vajpayee as the prime minister. The main Opposition in the Parliament since 2004.

**JANAMBHUMI OR JANMASTHAN:** Birth place.

**KARSEWAKS:** Volunteers executing their mission by their own hands.

**LUCKNOW BENCH OF ALLAHABAD HIGH COURT:** The highest court of the province of UP is located in Allahabad but it has a working bench in Lucknow, the capital of UP.

**NIRMOHI AKHARA:** *Akhara* is a wrestling corridor. People using a specific *Akhara* constituted themselves as a sect and ultimately *Akhara* became synonymous with an organization. Nirmohi means detached from worldly affairs.

**PUJA:** Prayer

**RAM:** A Hindu God, incarnation of Vishnu, one among the triumvirate of Vishnu, Bramha and Shiva. According to legend, Ram was born in Ayodhya and ruled from there. Ram's story is contained in many books, the most popular being Ramyana by Tulsi Das composed

in 16 century soon after the end of Babur's rule; here Ram is portrayed as God. Other narrations like the first one by Balmiki and subsequent ones such as "Ramayana as told by Aubrey Menen (banned in India), and the one by Ambedkar reproduced below do not treat him as a God. Over time, Ram has also become a symbolic word for God like Allah, Khuda, Bhagwan etc. Majority of the Hindus treat Ram as divine and the most just ruler. Thus the concept Ram-Rajya emerged.

**RASHTRIYA SWAYAMSEWAK SINGH:** The principal Hindu chauvinist organization.

**RATH YATRA:** A journey on chariot simulating traditional Indian horse-driven battle vehicle; was improvised by a truck during Advani's Rath Yatra.

**SHILANYAS:** Foundation laying ceremony.

**SITA KI RASOI:** Sita was the wife of Lord Ram and *Rasoi* means kitchen. Apparently, Sita used to cook food for her husband and herself, and perhaps others there.

**VEDAS:** These are texts compiled between 1500-500 BC. There are four vedas. Rigveda is the oldest (2000-1500 BC) and wholly devoted to sacrifices to Gods, all of which are not from the same period; some seem borrowed from the Indus valley civilization and some are the same as in old Iran and Mitanni (Western Asia). This was followed by Yajurveda, and Samaveda, all of which are full of hymns and rituals. The last veda is Atharvaveda, composed in about 1000 BC; it contains outspoken magic character, does not glorify Gods but contains verses "to protect the people against enemies, witchcraft, lightning worms and all kinds of disease, or to provide for them welfare and long life, freedom from fear, recovery of virility, the love of a girl, a husband, fecundity, successful pregnancy, a male child, relief from insanity and other diseases, or even take care of such trivial matters as 'to fasten and increase the hair.'" Highly orthodox Hindu institutions do not regard the last Veda, that is Atharvaveda sacred. Hindus believe Vedas as the philosophical foundation of Hinduism.

**VISHWA HINDU PARISHAD:** An international organization devoted to revivalism of Hinduism and its establishment as the official religion of India. Works closely with RSS but its main base is the Hindi speaking belt of India.

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## CHAPTER – 2

1. It was underway at the Lucknow bench of the Allahabad High Court, Lucknow, Uttar Pradesh, India
2. He was not Meer Baqi Isphani. Professor Shireen Moosavi of Aligarh Muslim University, Aligarh, India, appeared as a historian before the full bench, from the Muslim side, and said that he is wrongly known as Meer Baqi Isphani. It is in fact a misreading of *Asif-e-sani* (the great second Vazeer) which is the authentic decipherment in Epigraphic India, a publication of Archeological Survey of India. She contested that he was a Tashqandi (in Russia today) and a Sunni Muslim (on page-12 of her testimony).
3. He was Ibrahim Lodhi's Governor of the Ayodhya. Lodhi had fought the first battle of Panipat with Babur in 1526. He held a sway and controlled Ayodhya region. He was challenged by Meer Baqi Tashqandi, and had fled from Ayodhya.
4. The document has been submitted before the full bench. The reference is at page 176. *Early Travels in India (1583-1619)* edited by William Foster.

5. This has been mentioned in the footnote No. 7 at page 176. *Early Travels in India (1583-1619)* edited by William Foster.
6. The extract of this book was filed by Justice DN Agarwal, plaintiff of Other Original Suit (OOS) No. 5 of 1989 and the same was not disputed by the Muslim side. Justice Agarwal was associated with Vishwa Hindu Parishad (World Hindu Council) and has passed away. The bench has now the full text of the book.
7. The book is *Description Historique ET Gerographique DE L'INDE*. It is submitted with the full bench.
8. The *History, Antiquities, Topography and Statistics of Eastern India* (Five Volumes). First published in 1838. Reprinted again in 1976 by Cosmo Publication, New Delhi.
9. This copy is with the full bench.
10. *Gazetteers of the Territories* under the Government of the East India Company and the *Native States of the Continent of India* by Edward Thornton. Reprinted in 1993 by Low Price Publication, Delhi. The reference is from page 739-740.
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12. *Ibid* page 320-327
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19. P Carnegy (1870) *op.cit.*
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22. *Ibid* pages 218, 234, 235, 236.
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24. *Ibid* pages of 295, 296
25. *Ibid* 297
26. The Archeological Report of 1862-63 prepared by Cunningham. Pages 320-322.
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28. Faizabad- A Gazetteer (Volume XLIII) of the District Gazetteers of the United Provinces of Agra and Oudh. Written by HR Nevill, ICS, Printed by F Lluker Superintendent, Government Press United Province, Allahabad (1905)
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### CHAPTER – 3

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