

A CRITICAL ANALYSIS OF THE  
**BABRI MASJID**  
**JUDGMENT**  
AND THE CASE OF THE  
**PLACES OF WORSHIP**  
**ACT, 1991**



A CRITICAL ANALYSIS OF THE  
**BABRI MASJID**  
**JUDGMENT**  
AND THE CASE OF THE  
PLACES OF WORSHIP  
**ACT, 1991**



*Research by*  
JEM RESEARCH TEAM



Copyright © 2026 Justice & Empowerment of Minorities (JEM)

*Published by:*

**Justice & Empowerment of Minorities (JEM)**

info@jem.org.in

www.jem.org.in

All rights reserved. No part of this publication may be reproduced, stored in any retrieval system, or transmitted in any form or by any means, electronic or otherwise, without prior written permission of the publishers.

*Research by:* JEM Research Team

*Edited by:* Turath Publishing

*Cataloguing in Publication Data*

***A Critical Analysis of the Babri Masjid Judgment and the Case of the Places of Worship Act, 1991***

*Cover Design and Typesetting by:*

Turath Publishing

*Printed and Distributer by:*

Justice & Empowerment of Minorities (JEM)

# CONTENTS

|                                                              |     |
|--------------------------------------------------------------|-----|
| Introduction                                                 | i   |
| Opening Statement                                            | iii |
| Executive Summary                                            | v   |
| CHAPTER 1                                                    | 1   |
| INTRODUCTION                                                 | 1   |
| CHAPTER 2                                                    | 5   |
| SUPREME COURT OF INDIA - A<br>POLITICAL INSTITUTION          | 5   |
| CHAPTER 3                                                    | 11  |
| THE PLACES OF WORSHIP ACT, 1991:<br>REASONS AND EXPECTATIONS | 11  |
| Legislative History of the Act                               | 11  |
| The Language of the Provisions                               | 13  |
| Supreme Court's Reading                                      | 13  |
| CHAPTER 4                                                    | 17  |
| THE AYODHYA LOGIC: IDEA AND MATERIAL                         | 17  |
| Conceptual Foundations                                       | 17  |
| The Context of <i>Ismail Faruqi</i>                          | 22  |
| Judicial Dilution of Secularism                              | 25  |
| Re-Orienting the Freedom of Religion                         | 30  |

|                                                                    |    |
|--------------------------------------------------------------------|----|
| The Politics of Law in <i>Ismail Faruqi</i>                        | 34 |
| The Minority Opinion in <i>Ismail Faruqi</i>                       | 41 |
| CHAPTER 5                                                          | 45 |
| THE CULMINATION OF <i>AYODHYA LOGIC</i><br>IN THE TITLE DISPUTE    | 45 |
| The Cases Comprising the Ayodhya Title Suit                        | 45 |
| Judgment of the Allahabad High Court                               | 47 |
| Critique of the Allahabad High Court Judgment                      | 51 |
| Supreme Court Judgment                                             | 55 |
| Critique of the Supreme Court Judgment                             | 71 |
| CHAPTER 6                                                          | 75 |
| HOW <i>AYODHYA LOGIC</i> OPERATES:<br>THE ROLE OF JUDICIARY SO FAR | 75 |
| Timeline of Gyanvapi, Shahi Eidgah and Other Disputes              | 76 |
| The Long-Lasting Effects                                           | 84 |
| Re-Animation of Ayodhya: Five Methodological Parallels             | 86 |
| CHAPTER 7                                                          | 89 |
| AFTERWORD                                                          | 89 |
| Key Findings                                                       | 89 |
| Legal and Political Recommendations                                | 91 |
| Final Reflections                                                  | 93 |

## INTRODUCTION



Justice and Empowerment of Minorities (JEM) is an initiative of Jamiat Ulama-i-Hind, the country's oldest and largest socio-cultural organisation of Indian Muslims.

JEM's mission is to safeguard the human rights of the country's minorities while actively countering hate speech and hate crimes directed against them. The initiative seeks to document, compile, and present cases of harassment and violence—of any form—perpetrated against minority communities, particularly by right-wing elements. Its overarching objective is to promote the Rule of Law, access to justice, equal rights, citizens' security, and the protection of human rights.

JEM aims to empower victims of hate crimes by providing legal aid, judicial assistance, and advocacy. It works to defend and uplift religious minorities, marginalised, and persecuted individuals, groups, and communities, while strengthening India's constitutional framework that guarantees dignity, equality, and fundamental rights to all citizens.

Through research, documentation, and advocacy, JEM publishes reports highlighting incidents of hate crimes, marginalisation, and persecution of minorities. It also engages with institutions and stakeholders to ensure the effective implementation of equal rights, justice, peace, religious tolerance, and coexistence—contributing to the vision of a vibrant, inclusive, and prosperous India.



## OPENING STATEMENT



The Supreme Court of India appears to have developed a bias against Muslims in cases brought before it, particularly those involving the Places of Worship Act, 1991. This Report contends that the Court has gradually absorbed Hindutva logic, resulting in a marked reluctance to genuinely consider Muslim arguments on their merits. This is undeniably a bold claim, but when the evidence consistently points in this direction, we must state the facts plainly.

Our purpose here is neither political advocacy nor inflammatory rhetoric. Instead, we seek to open a necessary debate about the conduct of an institution entrusted with the ultimate authority over justice in this country. This Report does not challenge India's constitutional foundations; rather, it subjects the judiciary to the kind of critical examination that is itself constitutionally protected.

Demanding accountability from the judiciary for dysfunction or apparent bias may seem radical, but it is firmly grounded in constitutional principles. The arguments we advance rest on solid jurisprudential foundations. Critical legal studies, for instance, provides ample methodology for this type of analysis. And it's hardly news that courts are influenced by political forces—particularly majoritarian ones. What makes this moment unique in Indian legal history, however, is that the nation's highest court seems increasingly



guided by a cultural ideology rooted in historical distortions rather than sound legal reasoning. The Court's recent behavior feels more driven by ideology than by the pursuit of justice.

This Report is ultimately a call for judicial restraint. It argues that legal reasoning must flow from proper legal interpretation—not from judicial whim or the pressures of state power.

## EXECUTIVE SUMMARY



This Report offers a detailed and critical examination of how India's legal system—particularly the Supreme Court—has handled the Places of Worship (Special Provisions) Act, 1991, and related disputes over Muslim religious sites. It focuses on two landmark judgments: *Ismail Faruqui* (1994) and *M. Siddiq* (2019), exploring how political narratives from the Ram Janmabhoomi movement, which culminated in the Babri Masjid's destruction, have seeped into judicial reasoning. Rather than standing firm against Hindutva majoritarian pressures, the Report demonstrates how the law has been quietly reshaped to validate and advance Hindutva nationalist claims.

At its core, this Report argues that India's constitutional commitment to secularism has undergone a silent but profound transformation. This shift has not come through explicit rejection of secular principles, but through selective legal reasoning, symbolic compromises, and the courts' systematic avoidance of historical accountability. As the judiciary increasingly accommodates Hindutva majoritarianism, Muslim sacred spaces have become legally vulnerable, culturally contested, and politically targeted.

## KEY FINDINGS

- **Supreme Court and the Communalization of Law:** The Supreme Court's interpretation of the Places of Worship Act reveals how deeply majoritarian politics has penetrated legal validation. While legal arguments can always be framed in various ways, when the Court adopts the language of religious extremism and legitimizes it through legal doctrine, it exposes the foundational role that majoritarian—indeed, communal—politics plays in shaping the mindset of the nation's highest court.
- **Erosion of the Places of Worship Act:** The 1991 Act was designed to freeze the religious character of worship sites as they existed on August 15, 1947. Yet recent court rulings have interpreted the Act so narrowly that fresh claims against mosques in Varanasi, Mathura, and elsewhere are now proceeding. The legal shield is being dismantled through procedural loopholes and cultural rationalizations.
- **Redefinition of the Mosque:** In *Ismail Faruqi*, the Supreme Court declared that mosques are not essential to Islam. This ruling stripped mosques of their religious sanctity and constitutional protection, reducing them to ordinary property rather than recognizing them as inalienable sacred spaces. This understanding has carried forward into subsequent cases.
- **Faith as Legal Evidence in the Ayodhya Case:** In *M. Siddiq*, the Court awarded ownership of the Babri Masjid site to the Hindu party based primarily on belief, despite acknowledging that the mosque's demolition was illegal. Myth was preserved through legal reasoning that overrode claims based on legal entitlement, historical continuity, and constitutional justice.
- **The Transformation of Secularism:** The judiciary has shifted away from understanding secularism as minority protection,

instead adopting a model that treats religion as culture. This allows courts to accommodate majoritarian sentiment without openly violating the Constitution, creating symbolic equality while perpetuating real inequality.

- **Judicial Silence and Selective Memory:** The judiciary has avoided naming those responsible for the Babri Masjid demolition, framing communal violence in neutral, passive language. This erasure of historical wrongdoing enables political actors to recast violent acts as cultural or religious expression rather than legal wrongs demanding constitutional remedy.
- **Political Rhetoric Entering Legal Reasoning:** The language and logic of the Ram Janmabhoomi movement—sacred geography, civilizational grievance, collective memory—have infiltrated judicial texts. Courts have absorbed cultural narratives that support the majoritarian project and transformed them into constitutional justifications.
- **Opening Legal Pathways for Future Claims:** The combined impact of *Faruqui* and *Siddiq* has opened the door to future claims against other religious sites. The arguments deployed in those cases—concerning essential practices, belief, archaeological evidence, and civilizational memory—are now being recycled in ongoing litigation involving the Gyanvapi Mosque in Sambhal, the Shahi Eidgah at Mathura, and others.

## STRATEGIC RECOMMENDATIONS

The Report concludes with both legal and political recommendations to counter this transformation:

- **For the Judiciary:** Uphold the Places of Worship Act as intended, restore a robust constitutional secularism, reconsider the essential practices doctrine, and safeguard the integrity of religious spaces.

- **For Lawyers and Law Students:** Move beyond black-letter readings of the law. Understand how legal reasoning operates, what purposes it serves, and whose interests it advances. In this case, examine how the Places of Worship Act, 1991 has been systematically weakened through judicial interpretation.
- **For the Muslim Community:** Build legal literacy, preserve archival and documentary evidence, engage courts strategically, challenge dominant narratives, and forge alliances with other progressive and marginalized groups.
- **For Civil Society:** Use media, academic platforms, and legal forums to document, publicize, and resist the gradual constitutional erosion now unfolding under the language of neutrality and culture.

## FINAL REFLECTION

This Report is not simply about legal disputes or property claims—it concerns the future of secularism, constitutional equality, and religious freedom in India. The legal system is being restructured to protect majoritarian interests, normalize communal reasoning, and render minority institutions and lives precarious. The moment to respond is now—through constitutional advocacy, legal expertise, public translation of complex legal issues, strategic communication, and united civic action.

# CHAPTER 1

## INTRODUCTION



This Report examines how political rhetoric, cultural narratives, communal anxieties, and majoritarian ideology have infiltrated the legal reasoning of India's highest court. It demonstrates that Hindutva claims against Muslim public life have fundamentally shaped constitutional interpretations of religious rights in the country.

The Report investigates two central questions:

1. How has Indian constitutional law been reshaped to reduce protections for Muslim religious spaces while enabling Hindu majoritarian claims over them?
2. What role has the Supreme Court of India played in embedding Hindu majoritarian claims within the constitutional framework?

### OBJECTIVES OF THE REPORT

This Report pursues five main objectives:

1. To expose the political nature of the Supreme Court of India and reveal its institutional fault lines.
2. To critically assess the constitutional meaning and function of the Places of Worship Act, 1991.
3. To demonstrate how landmark judgments have systematically

weakened protections for Muslim civic life, particularly by targeting Muslim religious sites.

4. To show how political discourse rooted in communal rhetoric—especially surrounding Ayodhya—has shaped judicial thinking and eroded secularism as a core constitutional principle.
5. To offer legal and political strategies for resisting the ongoing dispossession of Muslim religious spaces.

## NOTE ON REFERENCING STYLE

This Report follows the Oxford Standard for the Citation of Legal Authorities (OSCOLA) with minor modifications. The following conventions apply:

1. *ibid* – see the immediately preceding footnote for full reference.
2. Noorani (n 11) 58 – see Noorani in footnote 11, page 58, for full reference.
3. Noorani (n 11) note 23 – see footnote 23 in Noorani’s text (cited in footnote 11).
4. *M. Siddiq* (n 46) para 48 – see the *M. Siddiq* judgment in footnote 46, paragraph 48, for full reference.

## KEY ARGUMENTS OF THE REPORT

The Report makes six major arguments:

1. That the judiciary has diluted the Muslim identity for all practical purposes, so much so that it has become difficult to seek legal justification for “Muslim” claims without falling into the trap of communal rhetoric.
2. That the judiciary has redefined constitutional secularism as formal neutrality, while silently supporting the Hindu majoritarian claims.

3. That the judiciary has treated Muslim sacred spaces, especially mosques, as legally vulnerable and replaceable, taking them from the hands of the community and handing them over to the State.
4. That legal reasoning has been shaped by the language of the *Ram Janma Bhoomi* movement, including faith-based claims and civilisational memory.
5. That legal precedent like *Ismail Faruqui* and *M. Siddiq* are now being used to weaken the Places of Worship Act and justify future claims against mosques in Varanasi, Mathura, and beyond.





## CHAPTER 2

# SUPREME COURT OF INDIA - A POLITICAL INSTITUTION



Describing the Supreme Court of India as a secular institution which delivers justice in a neutral fashion is a good statement to make but a bad one to acknowledge. The Supreme Court is not less political than the Parliament of India. It has its own method of doing politics, not through public engagement but through reading law in selective fashion. At times this is so apparent that the Court seems to be losing its credibility in the eyes of legal experts themselves.<sup>1</sup>

This chapter uncovers the veil on some of the related aspects of Supreme Court's behaviour. It demonstrates that the Supreme Court has over the years, acting politically, co-opted Hindutva rhetoric in its tone. It has done this against the interests of the Muslim community. Provided below is a brief account of such an understanding.

The notion that courts function as neutral interpreters of law is foundational to constitutional democracies. However, recent scholarship has challenged this assumption, arguing instead that judiciary itself is political institution — shaped by ideological,

---

1 'In Modi's Time Successive Chief Justices of India Failed the Country, Judicial System & Justice: Dushyant Dave to Karan Thapar' *The Wire* (15 July 2025)

cultural, and institutional forces, and often reinforcing dominant power structures.<sup>2</sup> Scholarship has highlighted the political nature of the Indian Supreme Court in different ways. However, most of it treads the academic argument while refraining from acknowledging the political tune which is often visibly explicit at times.<sup>3</sup>

As such there may be any number of ways in which this political nature can be explored.<sup>4</sup> This Report explicitly highlights the Indian judiciary's treatment of the Muslim identity, especially as regards the religious institutions, and claims to constitutional protection.

Ran Hirschl characterises “juristocracy” in the following words:

The belief that judicially affirmed rights are a force of social change removed from the constraints of political power has attained near-sacred status in public discussion... [This highlights] emergence of ... [a] new method of pursuing political goals and managing public affairs ...<sup>5</sup>

This insight is particularly relevant to India, where courts have often operated not as guardians of the constitutional promise of equality, but as participants in the consolidation of Hindutva

- 
- 2 Tom Gerald Daly, 'Post-Juristocracy, Democratic Decay, and the Limits of Gardbaum's Valuable Theory' (2020) 18(4) *International Journal of Constitutional Law* 1474, 1474-1475 ("The Indian Supreme Court has appeared more interested in self-preservation than guarding the democratic system threatened by Modi, and has undermined the functioning of parliament.")
  - 3 Upendra Baxi, *Indian Supreme Court and Politics* (Eastern Book Company 1980) 5 cited in Mohammad Ghouse, 'Book Review: Indian Supreme Court and Politics. By Upendra Baxi. 1980. Eastern Book Co., 34 Lal Bagh, Lucknow. Pp. xvii+272, Price Rs. 75', (1981) 23(2) *Journal of the Indian Law Institute* 288, 290 ("I believe it is time to take stock and to say what judges regard as unsayable: that the Supreme Court is a centre of political power.")
  - 4 Approaching the subject in a more subtle fashion - Anurag Bhaskar, Farrah Ahmed, Bhimraj Muthu and Shubham Kumar, *Report on Judicial Conceptions of Caste*, Centre for Research and Planning, Supreme Court of India (November 2025) 6 & 3 ("The purpose [of the Report] is not to ... analyse the outcome or reasoning of judgments, but to analyse judicial discourse... irrespective of outcome." Also, "A significant strand of the jurisprudence demonstrates inconsistency in the Court's understanding of whether caste is a phenomenon limited to Hinduism or a broader social structure cutting across religious communities.")
  - 5 Ran Hirschl, *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism* (Harvard University Press 2004) 1.

majoritarian ideology.<sup>6</sup>

The Indian judiciary, especially the Supreme Court, has repeatedly exercised its interpretive authority to produce a nationalistic culture, cloaked in the constitutional rhetoric of balance, secularism, and public order. This has been evident in the judgments; often in judicial silence, procedural inaction, and the selective application of the constitutional doctrine.<sup>7</sup>

Jaffrelot particularly classifies 2014 onwards as the period when the Supreme Court sharply moved to surrender before the executive.<sup>8</sup> Even where a critical stand against the government was taken by the judiciary,<sup>9</sup> there have been silent repercussions from the higher echelons of the institution itself.<sup>10</sup> Further, through reinterpretation of Article 25,<sup>11</sup> the judiciary has increasingly aligned its reasoning

---

6 Christophe Jaffrelot, *Modi's India: Hindu Nationalism and the Rise of Ethnic Democracy* (trans. Cynthia Schoch) (Princeton University Press 2021) 276 ("While a robust judiciary is a condition of democracy, besides the elite investigation agencies of the Indian police, the Supreme Court also abdicated some of its independence in the course of Modi's first term, under pressure as well as for other reasons.")

7 For instance, a close reading of *Anuradha Bhasin* demonstrates that the Supreme Court ended up objectifying Kashmir. It employed Kashmir internet shutdown as the basis for deriving constitutional benefits – the benefit of defining what could be the scope of fundamental rights in the cyberspace. However, when it came to applying such standards to Kashmir, it ended up taking the cover of "national security" – effectively saying that the same standards might not apply to Kashmir. *Anuradha Bhasin v. Union of India* (2020) 3 SCC 637.

8 Jaffrelot (n 6) 280-289.

9 In the context of 2020 North-East Delhi riots – Nizamuddin Ahmad Siddiqui and Saqib Rasool, 'The Sanctioned Ignorance and Incarcerated Voice: Sharjeel Imam and the Reimagination of Muslim Politics in India' (2025) 21(3) *Manchester Journal of Transnational Islamic Law and Practice* 39, 47 citing M. R. Shamshad, *Report of the DMC Fact-Finding Committee on North-East Delhi Riots of February 2020* (Delhi Minorities Commission, Government of NCT of Delhi, July 2020) 32 <<https://ia601906.us.archive.org/11/items/dmc-delhi-riot-fact-report-2020/-Delhi-riots-Fact-Finding-2020.pdf>> ("On 26 February 2020, the Delhi High Court had "asked the Delhi Police to take a 'conscious decision' to register an FIR in 24 hours" against the BJP leaders Kapil Mishra, Anurag Thakur and Parvesh Verma "for their speeches that led to incitement of violence [in North-East Delhi]". According to the North-East Delhi Riots Report, however, no FIR was filed against them.")

10 See generally, S. Muralidhar, *[In]complete Justice? Supreme Court at 75: Critical Reflections* (Juggernaut 2025)

11 *Samuel Kamalesan v. Union of India*, Special Leave to Appeal (C) No(s). 25838/2025 (Supreme Court in its reading of article 25 [freedom of religion] in the context of article 33 [power of the Parliament to modify fundamental rights in the context of armed forces] of the Indian

within civilisational tropes.<sup>12</sup>

A particularly egregious example of this structural bias is how courts claim epistemic authority over Muslim theology.<sup>13</sup> In contrast, Hindu assertions of “sacred geography”, such as the belief that Lord Ram was born at a specific spot have been judicially recognised as legitimate foundations for constitutional claims, justified in *M. Siddiq*.<sup>14</sup>

Such judicial behaviour, in other words, can be seen as representing a reconstitution of Hindu past as “legal memory”,<sup>15</sup> while simultaneously

---

Constitution, declined to interfere with the decision of the Delhi High Court [30 May 2025] which had upheld the dismissal of a Christian army officer for refusing to enter the sanctum of a temple during a regimental religious parade.). Also, Debby Jain, “Gross Indiscipline’: Supreme Court Upholds Dismissal Of Christian Army Officer For Refusal To Participate In Religious Parades’ Live Law (25 November 2025) (Upon told that “the petitioner stood outside the temple, and refrained from entering the sanctum sanctorium since he was a follower of a monotheistic faith, and would be against his Christian faith”, Justice Surya Kant’s response – “What kind of message he has been sending...he should have been thrown out for this only...grossest kind of indiscipline by an army official.” Similarly, Justice Bagchi’s observations – “Article 25 is protection for essential religious features, not every religious sentiment...you have to respect the collective faith of the majority that you are commanding...” <<https://www.livelaw.in.opj.remotlog.com/top-stories/supreme-court-samuel-kamalesan-plea-against-termination-from-indian-armed-forces-over-refusal-to-participate-in-religious-parades-311060>> For criticism of the SC’s refusal, see – Lt. Gen. HS Panag, ‘Lt Samuel Kamalesan’s dismissal for religious stand shows colonial mindset. Army must end it’ *The Print* (12 December 2025) <<https://theprint.in/opinion/samuel-kamalesans-dismissal-for-religious-stand-shows-colonial-mindset-army-must-end-it/2803975/>>

- 12 Nizamuddin Ahmad Siddiqui, ‘The CJI is wrong, Supreme Court judgments cannot be ‘public property of the nation’’, *Counter Currents* (13 January 2024) (“If culture attains the justification of law, the line separating the nation from the state gets blurred, and judicial decision becomes a tool to homogenise the subjects of the state.”) <<https://countercurrents.org/2024/01/the-cji-is-wrong-supreme-court-judgments-cannot-be-public-property-of-the-nation/>>
- 13 XXXX v. XXXXX 2022 *LiveLaw* (Ker) 559, para 6 (“... the Islamic clergy who have no legal training or knowledge in legal sciences, cannot be relied upon by the Court to decide on a point of law involved, relating to the personal law applicable to the Muslim community. The Courts are manned by trained legal minds. The Court shall not surrender to the opinions of the Islamic clergy, who have no legal training on the point of law.”)
- 14 *M. Siddiq (D) Thr Ors. v. Mahant Suresh Das & Ors* (2020) 1 SCC 1, para 136 (“Ram Janmabhumi is undoubtedly of religious significance to the Hindus based on the faith and belief that it is the birth-place of Lord Ram. A determination by this Court of whether or not the disputed site is a juridical person will not in any manner detract from the significance of the faith and belief of the Hindu community.”)
- 15 For instance, Section 2 of the Citizenship (Amendment) Act 2019 which allows, “any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 ... shall not be treated as illegal migrant for the purposes of this Act.” The language of the provision expressly discriminates against Muslims. See, Abhinav Chandrachud, ‘Secularism

casting the Muslim presence as contingent, recent, and legally doubtful.<sup>16</sup> This evidences a systemic bias not simply against Muslims as a group, but against their historical, architectural, and religious entitlements.<sup>17</sup>

In theory, courts adjudicate according to constitutional principles. In practice, however, the Indian judiciary has often served as a forum for the affirmation of the Hindutva ideology.<sup>18</sup> The evolution of legal reasoning in cases involving Muslim litigants and religious institutions reveals a judiciary that is both political in function and civilisational in orientation.<sup>19</sup> It does not simply reflect the rise of Hindu nationalism; it actively enables it.<sup>20</sup> Recent works demonstrate the growing entrenchment of Hindutva majoritarianism within the legal profession at all levels and in all forms.<sup>21</sup>

---

and the Citizenship Amendment Act' (2020) 20(2) Indian Law Review 138 (arguing that post-independent citizenship law in India discriminate against Muslims); Farrah Ahmed, 'Arbitrariness, Subordination and Unequal Citizenship' (2020) 4(2) Indian Law Review 121, 136 (calling CAA "not just unconstitutional, but patently, manifestly and obviously unconstitutional"); Gautam Bhatia, 'Citizenship and the Constitution' in Thapar and Others (eds), *On Citizenship* (Aleph Books 2021) 57, 60 (arguing that "... religion cannot become a basis for citizenship")

- 16 *Mohammad Salimullah & Anr. v. Union of India & Ors.* LL 2021 SC 202 (Order of 8 April 2021). Nizamuddin Ahmad Siddiqui and Abu Zar Ali, 'Supreme Court order allowing deportation of Rohingyas shows that India hasn't shed Partition baggage' *The Scroll* (18 April 2021) <<https://scroll.in/article/992447/supreme-court-order-allowing-deportation-of-rohingyas-shows-that-india-hasnt-shed-partition-baggage>> (arguing that the Rohingya refugee problem is deeply connected with the Citizenship (Amendment) Act, 2019 and the post-partition anxieties around the citizenship of Indian Muslims).
- 17 For instance, the Supreme Court's Interim Judgment on pleas challenging the Waqf (Amendment) Act, 2025 - In Re: *The Waqf Amendment Act, 2025* 2025 INSC 1116. For a detailed account of judicial misreading of the dispute, see - Nizamuddin Ahmad Siddiqui, 'The Waqf Interim Judgement is a Smokescreen: A (detailed) Critique' *The Leaflet* (7 October 2025) <<https://theleaflet.in/religion/the-waqf-interim-judgement-is-a-smokescreen-a-detailed-critique>>
- 18 Jaffrelot (n 6) 435 ("Indeed, the recognition of the Hindus' religious sentiment as the main reason why the court permitted the construction of a Ram temple on the remnants of the Babri Masjid prepared the ground for majoritarian justice.")
- 19 Jaffrelot (n 6).
- 20 Ibid 290-294 (highlighting the close proximity of Justices AK Goel, Arun Mishra and Ranjan Gogoi to BJP/RSS politics).
- 21 Ibid 290-291 ("...the Sangh Parivar has chosen law schools where the best Indian lawyers are trained as one of its favorite recruitment grounds."). Also, Sushovan Patnaik, 'Lowering the Bar: The RSS Legal Front's Increasing Hold Over the Legal System' *The Caravan* (October 2024) 24 ("The ABAP's [Akhil Bharatiya Adhivakta Parishad] rise to prominence, in high society as well as in the thousands of district and trial courts across the country, through an ever-expanding

Christophe Jaffrelot, reading the political nature of the Court in the context of the Ayodhya case (Babri Masjid-Ram Janmabhoomi case), argues:

Ideological affinities between Supreme Court judges and the Sangh Parivar have been ... obvious in the Ayodhya case. The way this case has been dealt with by the Indian judiciary over the last thirty years shows that the courts and judges have gradually shifted away from secularism.<sup>22</sup>

He argues:

In other words, the Ayodhya verdict of the Supreme Court of India is based on the Hindus' belief, a clear sign of its adherence to the ideology of majoritarianism.<sup>23</sup>

---

network of study circles, strategic litigation and personal connections, has been one of the Hindu Right's most persevering, tactical expansions.")

22 Christophe Jaffrelot and Prannv Dhawan, 'What Checks and Balances? Explaining the Supreme Court's Complacency in Modi's India' (2025) 5(2) Indian Politics and Policy 5, 19.

23 Ibid 20.

## CHAPTER 3

# THE PLACES OF WORSHIP ACT, 1991: REASONS AND EXPECTATIONS



It is pertinent to not only look at the Act but also how the Supreme Court read it, eventually in its 2019 judgment.

### LEGISLATIVE HISTORY OF THE ACT

On 4 January 1991, Mitra Sen Yadav moved a private member's resolution asking government to bring legislation for the protection of the status and title of the "places of religious significance as on 15 August, 1947".<sup>24</sup> On 12 July, 1991, Zainul Abedin moved yet another private member resolution urging the government to enact legislation for preserving and maintaining the "*status quo* of all religious shrines and places of worship as they existed on August 15, 1947".<sup>25</sup> This forms the background before the Indian Government under Congress took the initiative in the direction of enacting legislation.

The President of India in his Address to Tenth Lok Sabha highlighted the need to protect the places of worship in India.<sup>26</sup> He observed:

---

24 Mitra Sen Yadav, Lok Sabha Debates, Ninth Series, Sixth Session, Vol. XIII, No. 5 (4 January 1991) 561-563.

25 Zainul Abedin, Lok Sabha Debates, Tenth Series, First Session, Volume I, No. 4 (12 July 1991) 190-225.

26 President of India, Mr. R. Venkatraman, Address to Parliament, Tenth Lok Sabha, 1st Session (11



Places of worship must be treated with due respect. We cannot allow communal elements to defile their sanctity by using such places as instruments to generate controversy and discord.<sup>27</sup>

In the context of the Babri-Ram Janma Bhoomi dispute, he underscored the need that the Government should make:

...every effort to find a negotiated settlement to the Ram Janma Bhoomi—Babri Masjid issue with due regard to the sentiments of both communities involved.<sup>28</sup>

Additionally, he also signalled that:

In case of all other places of worship, a Bill will be introduced to maintain the status quo as on 15th August, 1947, in order to foreclose any new controversy.<sup>29</sup>

During the Monsoon Session of 1991, the Home Minister, S.B. Chavan tabled the Places of Worship (Special Provisions) Bill in the Lok Sabha. According to him, the legislative intent behind the Bill was to:

...prohibit conversion of any place of worship and to provide for the maintenance of the religious character of any place of worship as it existed on the 15th day of August, 1947.<sup>30</sup>

He argued that the Bill was necessary to stop the:

...controversies arising from time to time with regard to conversion of places of worship which tend to vitiate the communal atmosphere.<sup>31</sup>

---

July 1991)

27 Ibid 367.

28 Ibid.

29 Ibid.

30 S. B. Chavan, Home Minister, Lok Sabha Debates, Ninth Series, Vol. IV, No. 31 (Friday, 23 August 1991) 428.

31 S. B. Chavan, Home Minister, Lok Sabha Debates, Tenth Series, Vol. V, No. 41 (Monday, 9 September 1991) 680.

## THE LANGUAGE OF THE PROVISIONS

Section 3 enacts a bar on the conversion of a place of worship of any religious denomination or a section of it into a place of worship of a different religious denomination or of a different segment of the same religious denomination.<sup>32</sup> Section 4 preserves the religious character of a place of worship as it existed on 15 August 1947.<sup>33</sup> The Act, however, under Section 5, contains an exemption from the application of its provisions to the places of worship – commonly known as Babri Masjid-Ram Janma Bhoomi and to any suit, appeal or proceeding related to it.<sup>34</sup> Consequently, there is a specific exception which has been carved out by the provisions of the Act in the context of the present dispute. Section 6 provides for a punishment of three years' imprisonment and a fine for contravening the provisions of Section 3 and for an attempt or act of abetment.<sup>35</sup> Section 7 confers upon the Places of Worship Act overriding force and effect.<sup>36</sup>

## SUPREME COURT'S READING

The Court cited Chavan and Bhattacharya's arguments in the Parliament to emphasise the foundational intent behind the Act. Chavan had argued:

We see this Bill as a measure to provide and develop our glorious traditions of love, peace and harmony. These traditions are part of a cultural heritage of which every Indian is justifiably proud. Tolerance for all faiths has characterized our great civilization since time immemorial. These traditions of amity, harmony and mutual respect came under severe strain during the

---

<sup>32</sup> Bar of Conversion on Places of Worship.

<sup>33</sup> Declaration as to the religious character of certain places of worship and bar of jurisdiction of courts, etc.

<sup>34</sup> Act not to apply to Ram Janma Bhumi-Babri Masjid.

<sup>35</sup> Punishment for contravention of section 3.

<sup>36</sup> Act to override other enactments.

pre-independence period when the colonial power sought to actively create and encourage communal divide in the country. After independence we have set about healing the wounds of the past and endeavoured to restore our traditions of communal amity and goodwill to their past glory. By and large we have succeeded, although there have been, it must be admitted, some unfortunate setbacks. Rather than being discouraged by such setbacks, it is our duty and commitment to taken lesson from them for the future.<sup>37</sup>

In the context of the cut-off date of 15 August 1947, Bhattacharya had emphasised:

...I think this August 15, 1947 is crucial because on that date we are supposed to have emerged as a modern, democratic and sovereign State thrusting back such barbarity into the past once and for all. From that date, we also distinguished ourselves...as State which has no official religion and which gives equal rights to all the different religious denominations. So, whatever may have happened before that, we all expected that from that date there should be no such retrogression into the past.<sup>38</sup>

Speaking on the philosophy behind the Act, the Court underscored Chavan's arguments. He had observed:

I believe that India is known for its civilization and the greatest contribution of India to the world civilization is the kind of tolerance, understanding, the kind of assimilative spirit and the cosmopolitan outlook that it shows...The Advaita philosophy... clearly says that there is no difference between God and ourselves. We have to realize that God is not in the mosque or in the temple only, but God is in the heart of a person...Let everybody understand that he owes his allegiance to the Constitution,

---

37 *M. Siddiq* (n 14) para 99 citing S.B. Chavan, Lok Sabha Debates, Volume V, Nos. 41-49 (10 September 1991) 448.

38 *Ibid* para 100 citing Malini Bhattacharya, Lok Sabha Debates, Volume V, Nos. 41-49 (10 September 1991) 443-444.

allegiance to the unity of the country: the rest of the things are immaterial.<sup>39</sup>

The Court highlighted that the law imposes two unwavering and mandatory norms:

1. A bar is imposed by Section 3 on the conversion of a place of worship...the expression “place of worship” is defined in the broadest possible terms to cover places of public religious worship of all religions and denominations.<sup>40</sup>
2. The law preserves the religious character of every place of worship as it existed on 15 August 1947. Towards achieving this purpose, it provides for the abatement of suits and legal proceedings with respect to the conversion of the religious character of any place of worship existing on 15 August 1947... [The Act] imposes a bar on the institution of fresh suits or legal proceedings. The only exception is in the case of suits, appeals or proceedings pending at the commencement of the law on the ground that conversion of a place of worship had taken place after 15 August 1947...Section 4 saves those suits, appeals and legal proceedings which are pending on the date of the commencement of the Act if they pertain to the conversion of the religious character of a place of worship after the cut-off date.<sup>41</sup>

Highlighting the importance of the legislation, the Supreme Court observed:

The Places of Worship Act imposes a non-derogable obligation towards enforcing our commitment to secularism under the Indian Constitution. The law is hence a legislative instrument designed to protect the secular features of the Indian polity,

---

39 Ibid para 101 citing S.B. Chavan, Rajya Sabha Debates, Volume CLX, Nos. 13-18 (12 September 1991) 519-520 and 522.

40 Ibid para 97.1

41 Ibid para 97.2

which is one of the basic features of the Constitution.<sup>42</sup>

The Court invoked the rule of non-retrogression. It emphasised:

Non-retrogression is a foundational feature of the fundamental constitutional principles of which secularism is a core component. The Places of Worship Act is thus a legislative intervention which preserves non-retrogression as an essential feature of our secular values.<sup>43</sup>

On the sanctity of the Act, the Court argued:

The Places of Worship Act is intrinsically related to the obligations of a secular state. It reflects the commitment of India to the equality of all religions. Above all, the Places of Worship Act is an affirmation of the solemn duty which was cast upon the State to preserve and protect the equality of all faiths as an essential constitutional value, a norm which has the status of being a basic feature of the Constitution. There is a purpose underlying the enactment of the Places of Worship Act. The law speaks to our history and to the future of the nation. Cognizant as we are of our history and of the need for the nation to confront it, Independence was a watershed moment to heal the wounds of the past. Historical wrongs cannot be remedied by the people taking the law in their own hands. In preserving the character of places of public worship, Parliament has mandated in no uncertain terms that history and its wrongs shall not be used as instruments to oppress the present and the future.<sup>44</sup>

---

42 Ibid para 102.

43 Ibid para 102

44 Ibid para 103.

## CHAPTER 4

# THE AYODHYA LOGIC: IDEA AND MATERIAL



The “Ayodhya Logic” as we call it here needs to be understood in greater detail.

### CONCEPTUAL FOUNDATIONS

KM Panikkar argues that the origins of the Hindu claim over Babri Masjid arose in the context of the dispute over Hanumangarhi temple. In 1855, a group of Sunni Muslims made a claim, under the leadership of Shah Ghulam Hussain, that the Hanumangarhi temple was built by razing a pre-existing mosque. Communal violence ensued in which large numbers of Muslims were killed. Some of these Muslims had taken shelter in the nearby Babri mosque, where the *Bairagis* (Hindus) later found and killed them. However, the *Bairagis* did not make claim to the mosque similar to the Muslim claim over Hanumangarhi, immediately. A committee, later appointed by the Nawab of Awadh, held that there was no evidence of a pre-existing mosque at the site of Hanumangarhi. The findings of the committee were resented by Maulvi Amir Ali Amethavi who started organising a movement to claim the mosque. The Nawab toyed with the idea of constructing a mosque adjacent to the temple to “assuage the feelings of the Muslims”. However, this could not happen due to the strong

opposition by the Hindus.<sup>45</sup>

Interestingly, the Hanumangarhi episode has been mistaken by many as a dispute over Babri mosque and Ram Janmasthan, including by Michael Fisher.<sup>46</sup> Panikkar argues otherwise. He writes:

An important dimension of the Hanumangarhi episode is that it indicated the absence at that time of any linkage between the Babri Masjid and the Janmasthan in Hindu consciousness. Although the Bairagis captured the Masjid in which the Muslims had taken shelter they did not occupy it or advance a claim co it. Instead they retreated to the Hanumangarhi almost instantaneously. It is also important that during the course of the inquiry no Hindu had mentioned the earlier existence of a temple at the site of the Masjid, even as a counter to the Muslim claim on the Hanumangarhi temple. The local tradition about the Janrnasthan temple to which the British officials have referred, does not appear to be current in 1855.

The Hanumangarhi episode, however, contributed to the construction and dissemination of such a tradition. How it actually came into being is not certain, but it originated, most probably, as an attempt to checkmate the Muslim claim on the Hanurnangarhi temple. The Mahant of Hanumangarhi was quick to realize the implication of the proceedings initiated by Gulam Hussain and Amir Ali. The proposal of the Nawab to build a mosque adjoining the temple was quite alarming to him. He apprehended that the decision of the government need not necessarily go in favour of the Hindus if the agitation was to be renewed in the future. A counter-claim on the areas controlled by the Muslims could be an effective move to foil the designs of orthodox Muslims to gain possession of the temple. The demand

---

45 KM Panikkar, 'A Historical Overview' in S. Gopal (ed.), *Anatomy of a Confrontation: The Babri Masjid-Ram Janmabhumi Issue* (Penguin Books 1991) 22, 31-32 (references omitted).

46 Ibid.

for the Janmasthan thus originated as a defensive ploy.<sup>47</sup>  
Panikkar writes:

Soon after the Revolt of 1857 the Mahant took over a part of the Babri Masjid compound and constructed a *chabutra* (raised platform). This attempt of the Mahant was opposed by the local Muslims. On 30 November 1858, Maulvi Muhammad Asghar, *khatib* and *muazzin* of the Babri Masjid, submitted a petition to the magistrate complaining that the *Bairagis* had built a *chabutra* close to the mosque and that they had written 'Rama, Rama' on the walls of the mosque. Similar complaints were made in 1860, 1877, 1883 and 1884. In 1885 the Mahant filed a suit to gain legal title to the land and for permission to construct a temple on the *chabutra*. His suit and appeals were dismissed. His claim for the proprietorship of the land in the compound of the Masjid was also dismissed by the judicial commissioner. Yet the idea that the Masjid was constructed at a holy place of the Hindus and that it was a disputed area was firmly established.<sup>48</sup>

According to Geetanjali Srikantan, the three earliest decisions in the Babri Masjid-Ram Janmabhoomi case are foundational in establishing the conceptual contours of the dispute.<sup>49</sup> Interestingly, all these decisions stem from the claim over *chabutra* by Mahant Raghubar Dass, indicated above. The decisions include - dismissal of the Dass' original civil suit before Sub Judge, Faizabad;<sup>50</sup> dismissal of the appeal from Dass' suit before the Court of District Judge, Faizabad;<sup>51</sup> and, dismissal of the appeal before Judicial Commissioner, Oudh.<sup>52</sup>

---

47 Ibid 32-33 (references omitted).

48 Ibid 33 (references omitted).

49 Geetanjali Srikantan, 'Reexamining Secularism: The Ayodhya Dispute and the Equal Treatment of Religions' (2017) 5 Journal of Law, Religion and State 117.

50 Suit No 61/280 of 1885, dismissed on 24 December 1885.

51 Civil Appeal No 27 of 1886, dismissed on 26 March 1886.

52 Second Civil Appeal No. 122 of 1886, judgement of W. Young, Officiating Judicial Commissioner, Oudh, dated 1 November 1886. Noorani provides good detail on these suits in his voluminous work - A.G. Noorani (ed.), *The Babri Masjid Question, 1528-2003: 'A Matter of National Honour'* Vol. 1



In the context of the decisions, Srikantan argues:

These three 19th century decisions by colonial courts are significant for the manner in which they establish certain facts without enquiry or proof. These facts are that the birthplace of Ram lies within the precincts of the mosque and that the mosque was built by the Mughal ruler Babur to humiliate the conquered Hindus. The decision by the Judicial Commissioner also added two other dimensions to these facts. It understood the Mahant's claim to "ownership" as title within the framework of modern property law, and it converted the Mahant's ownership claim from an individual claim on behalf of his community into a property claim on behalf of a "religion," i.e., the "Hindus" ... Establishing these facts as some form of legal truth influenced the manner in which the dispute developed in the 20th century.<sup>53</sup>

Parmanand Singh writes:

Nothing notable happened between 1886 and 1934. In 1934 riots took place over the Babri Masjid issue. The communal riot was sparked off by the slaughter of a cow in the village Shahjahanpur near Ayodhya on 27 March 1934. The cow slaughter occurred on the Bakra-Id festival of the Muslims. Hindus damaged the Babri Masjid. However the mosque was repaired and reconditioned by a Muslim contractor at the expense of the British government.

In 1936 the Commissioner of Waqfs set up an enquiry, under the Uttar Pradesh Muslim Waqfs Act, into the ownership of the property. The enquiry declared that the Babri Masjid was built in 1528 by Babar who was a Sunni Muslim. In March 1946 the mosque was declared a Sunni mosque.<sup>54</sup>

---

(Tulika Books 2003) 175-188.

53 Srikantan (n 49) 129.

54 Parmanand Singh, 'Legal History of the Ayodhya Litigation' (1991) 18(2) Indian Bar Review 31 cited in Noorani Vol. 1 (n 52) 189.

Srikantan argues that the Commissioner's report provided the Babri Masjid "juridical basis for the property" which was possible only in the 20th century when quite many waqf legislations were introduced in different regions of the country. It was the "lack of developments between 1886 and 1934" that gave actual credence to the report.<sup>55</sup> She writes:

The declaration that the mosque is "property" plays the crucial role in understanding the key moment in the dispute, which occurred on the night of the 22nd/23rd of December, 1949 when idols were placed under the central dome of the mosque by Ram devotees. This event laid the foundation for the Hindu claim to the property through the presence of the idol and the events that followed.<sup>56</sup>

The law of Hindu endowments developed in tandem with the waqf legislations and so developed the understanding that a Hindu deity is an independent legal personality which could sue and be sued.<sup>57</sup> This further created a favourable environment for the Hindu side. Srikantan argues:

The conception of the idol as significant in making a property claim was therefore already available present in the legal consciousness. The action of placing the idol under the central dome of the mosque must thus be understood as making a property claim, one that crystallized only 40 years later.<sup>58</sup>

While property claims could now be made from both the sides, the understanding how secular language of the Constitution could be

---

<sup>55</sup> Srikantan (n 49) 130.

<sup>56</sup> Ibid.

<sup>57</sup> *Hanooman Persaud Pandey v. Mussumat Babooee Munraj Koonweree* 1856 6 M.I.A. 393 (holding that *shebait* representing the idol is like manager of an infact heir's estate); *Pramanatha Mullick v. Pradyumna Kumar Mullick* 1925 42 I.A. 245 (holding that a Hindu idol is a juristic personality which can sue and be sued).

<sup>58</sup> Srikantan (n 49) 131.

used to validate (or invalidate) religious arguments remained missing. This missing piece from the puzzle was fixed by the *Ismail Faruqi* judgment.<sup>59</sup>

## THE CONTEXT OF ISMAIL FARUQI

*Ismail Faruqi* is important for three reasons – *first*, it pushed reading of the Babri Masjid-Ram Janmabhoomi dispute from the Hindu perspective; *second*, it read secularism from the Hindutva lens countering earlier readings by the Courts; *third*, it facilitated mainstreaming of the Hindutva reading of the freedom of religion, as becomes evident later. It seems important to highlight all these aspects in further detail.

The factual background of *Ismail Faruqi* is as follows. The Acquisition of Certain Area at Ayodhya Bill, 1993 was introduced to replace The Acquisition of Certain Area at Ayodhya Ordinance, 1993 promulgated by the President on 7 January 1993.<sup>60</sup> The Statement of Objects and Reasons of the Bill observed:

The [Babri Masjid-Ram Janmabhoomi] dispute has thus affected the maintenance of public order and harmony between different communities in the country. As it is necessary to maintain communal harmony and the spirit of common brotherhood amongst the people of India, it was considered necessary to acquire the site of the disputed structure and suitable adjacent land for setting up a complex which could be developed in a planned manner wherein a Ram temple, a mosque, amenities for pilgrims, a library, museum and other suitable facilities can be set up.<sup>61</sup>

---

59 *Dr. M. Ismail Faruqi & Others v. Union of India & Others* (1994) 6 Supreme Court Cases 360.

60 The Bill was introduced in the Parliament by S.B. Chavan (Home Minister) on 9 March 1993. The Act, however, was enforced from 7 January 1993.

61 Copied from the text of the Bill.

The Acquisition of Certain Area at Ayodhya Act, 1993<sup>62</sup> (hereinafter Ayodhya Act) transferred the “right, title and interest” in relation to the Babri Masjid-Ram Janmbhoomi disputed area in the hands of the Central Government. The vesting of such rights enabled the Central Government (in some instances, State Government) to manage, transfer and make rules with regard to the designated area.

Subsequent to the passing of Ayodhya Act, President of India, through a Special Reference under Article 143(1) of the Constitution, asked the Supreme Court to respond to the following question in relation to the designated area regulated by the Ayodhya Act:<sup>63</sup>

Whether a Hindu temple or any Hindu religious structure existed prior to the construction of the Ram Janma Bhumi-Babri Masjid (including the premises of the inner and outer courtyards of such structure) in the area on which the structure stood?

The Supreme Court clubbed the Presidential Reference with the other pending suits before it.<sup>64</sup> During the proceedings, the Court sought clarification about the purpose of the Special Reference. The Solicitor General clarified in writing:

Government is committed to the construction of a Ram temple and a mosque, but their actual location will be determined only after the Supreme Court renders its opinion in the Presidential Reference.

Government will treat the finding of the Supreme Court on the question of fact referred under Article 143 of the Constitution as a verdict which is final and binding.

If the question referred is answered in the affirmative, namely,

---

<sup>62</sup> Act No. 33 of 1993 (3 April 1993).

<sup>63</sup> The Presidential Reference was made the same day the Ordinance was passed, i.e., 7 January 1993. Since the Act which replaced the Ordinance came into force retrospectively from 7 January, the Reference operated on the Act.

<sup>64</sup> These included, in addition to other petitions, *Ismail Faruqi* (n 59).

that a Hindu temple/structure did exist prior to the construction of the demolished structure, Government action will be in support of the wishes of the Hindu community. If, on the other hand, the question is answered in the negative, namely, that no Hindu temple/structure existed at the relevant time, then Government action will be in support of the wishes of the Hindu community.<sup>65</sup>

The Supreme Court upheld the constitutional validity of the Ayodhya Act, except Section 4(3) which provided for abatement of all pending suits and legal proceedings related to the disputed area.<sup>66</sup> Striking down of Section 4(3) had the effect of bringing back to life all the pending suits and legal proceedings where the dispute between parties was pending resolution.<sup>67</sup> The Court declined to respond to the Presidential Reference, arguing that it had become “unnecessary and superfluous”.<sup>68</sup>

---

65 Ibid 390.

66 Section 4(3) provided: 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.

67 *Ismail Faruqi* (n 59) para 83.

68 Ibid. Palkhivala criticised the very basis of the Presidential Reference–Nani Palkhivala, *Muslim India* (February, 1994) 134 (“The Courts can decide only questions of fact or of law. They cannot decide, and should never be called upon to decide, question to opinion or belief or political wisdom. It is not the Court's role to be an extended arm of the executive.” Also, “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. The correct position in law is that the Supreme Court should decline to entertain such a manner under Article 143, and emphatically state that it is not within the jurisdiction of the Court to hear the matter and not within the ambit of Article 143 to be asked to express an opinion on such an issue.”) cited in Noorani (Vol. 2) (n 52) 248-260.

## JUDICIAL DILUTION OF SECULARISM

The majority judgment in *Ismail Faruqi* penned down by Justice J.S. Verma (for himself, Chief Justice Venkatachaliah and Justice G.N. Ray), situated secularism within the constitutional context.<sup>69</sup> It cited writings and speeches by M.C. Setalvad, Dr. Shankar Dayal Sharma and Dr. Zakir Husain to buttress the correct understanding of secularism.<sup>70</sup> It also cited Hindu scriptures to situate secularism within the philosophy of “Sarv Dharma Sambhav”—tolerance and understanding of the equality of all religions.<sup>71</sup> The Court also cited *S.R. Bommai*<sup>72</sup> to buttress the point of “equality of all religions”.

According to Ratna Kapur, however, the Court’s approach in *Ismail Faruqi* was substantially different from what it had observed in *Bommai*.<sup>73</sup> While previously it defined secularism premised “on the principle of equal treatment of all religions”, in *Ismail Faruqi* its understanding of secularism was “...derived primarily from Hindu scriptures.”<sup>74</sup> The Court went on to accept the claim that “secularism

69 Soli Sorabjee criticised the majority judgment – Soli Sorabjee, *Minorities: National and International Protection* (New Delhi: Minorities Council of India 1995) 11-12 (“The majority judgement overlooks that the reason why the worship in the mosque had come to a standstill was the surreptitious entry into the mosque and the placing of idols there in a clandestine manner.” Also, “The real issue was not whether Hindus are offering worship in a reduced form but whether worship and puja of idols by one community should at all be permitted after the dastardly act of destruction...”) cited in Noorani (Vol. 2) (n 52) 272.

70 *Ismail Faruqi* (n 59) para 33-35.

71 *Ibid* para 35.

72 *S.R. Bommai v. Union of India* 1994 SCC (3) 1

73 Ratna Kapur, ‘The “Ayodhya Case”: Hindu Majoritarianism and the Right to Religious Liberty’ (2014) 29 *Maryland Journal of International Law* 305, 322 (“In the Supreme Court’s 1994 decision in *M. Ismail Faruqi v. Union of India* (U.O.I.), there appears to be a substantial shift from its earlier position and reflects a discursive tension in the judicial understandings of secularism.”)

74 Ratna Kapur, ‘A Leap of Faith: The Construction of Hindu Majoritarianism through Secular Law’ (2014) 113(1) *The South Atlantic Quarterly* 109, 113. For a more detailed exposition on this and other arguments, see – Kapur (n 73). For instance, at 325 (“The speech [of Shankar Dayal Sharma] also drew from a more eclectic set of resources, including Islam, Christianity and Zoroastrianism. However, towards the end of his decision, Justice Verma proceeded to observe that Hinduism is a tolerant faith that has enabled all of these religions to find shelter and support in India... Implicit in this logic is that as Hindus are tolerant, and tolerance is a central component of Indian secularism, then only Hindus are truly secular.”)

existed in India largely because of the religious toleration found in the Hindu scriptures.”<sup>75</sup>

The repercussions of such a reading, argues Kapur, were soon observed in the *Hindutva* cases (1995).<sup>76</sup> The main argument in these cases was that specific set of provisions, more particularly Section 123(3) and 123(3A), of The Representation of the People Act, 1951 (hereinafter Act) were violated by some members belonging to the *Hindutva* parties in the state legislature.<sup>77</sup> These members, it was argued, had appealed to religious sentiments during their election campaigns. Some of the political statements recorded by the Court in *Manohar Joshi* include:

The result of these elections will not only depend on the solution to the problem of food, cloth but the same will also decide whether in the State [of Maharashtra] the flame of *Hindutva* will grow or will be extinguished. If in Maharashtra the flame of Hinduism is extinguished, then anti-national Muslims will be powerful and they will convert Hindustan into Pakistan. If the flame of *Hindutva* will grow then in that flame the anti-national Muslims will be reduced to ashes. (Pramod Mahajan)<sup>78</sup>

---

<sup>75</sup> Kapur (n 74) 113.

<sup>76</sup> In total there were 13 cases: *Manohar Joshi v. Nitin Bhaurao Patil*, (1996) 1 S.C.C. 169; *Ramesh Yashwant Prabhoo v. Prabhakar Kasinath Kunte*, A.I.R. 1996 1 S.C. 1113; *Bal Thackeray v. Prabhakar Kasinath Kunte*, (1996) 1 S.C.C. 130; *Ramchandra G. Kapse v. Haribansh Ramakbal Singh*, (1996) 1 S.C.C. 206; *Pramod Mahajan v. Haribansh Ramakbal Singh*, (1996) 1 S.C.C. 206; *Sadhvi Ritambhara v. Haribansh Ramakbal Singh*, (1996) 1 S.C.C. 206; *Ramakant Mayekar v. Smt. Celine D'Silva*, (1996) 1 S.C.C. 399; *Chhagan Bhujbal v. Smt. Celine D'Silva*, 1 S.C.C. 399; *Pramod Mahajan v. Smt. Celine D'Silva*, 1 S.C.C. 399; *Balasaheb Thackeray v. Smt. Celine D'Silva*, 1 S.C.C. 399; *Moreshwar Save v. Dwarkadas Yashwantrao Pathrikar*, (1996) 1 S.C.C. 394; *Chandrakanta Goyal v. Sohan Singh Jodh Singh Kohli*, (1996) 1 S.C.C. 378; *Shri Suryakant Venkatrao Mahadik v. Smt. Saroj Sandesh Naik*, (1996) 1 S.C.C. 384. Kapur (n 73) note 9.

<sup>77</sup> Section 123(3) and 123(3A) define “corrupt practices” in relation to any election campaign. While 123(3) prohibits seeking vote or refraining from it on the basis of religion, 123(3A) prohibits promotion or attempt of promotion of enmity or hatred against different classes of citizens of India, including on the ground of religion.

<sup>78</sup> *Manohar Joshi* (n 76) para 31.

Rajiv Gandhi [then prime minister of India] speaking on Hindutva is like a prostitute lecturing on fidelity. The country is again headed for partition. It is, therefore, necessary that in these circumstances and to keep the flame of Hindutva alive, the alliance of BJP-Shiv Sena should be elected. (Mahajan)<sup>79</sup>

Curiously, Supreme Court held that there was no violation of the said provisions. The Court went on to equate *Hinduism* with *Hindutva* to justify its reasoning. The observations of the Court in arriving at such a conclusion are copied at length below:

Thus, it cannot be doubted, particularly in view of the Constitution Bench decisions of this Court that the words ‘Hinduism’ or ‘Hindutva’ are not necessarily to be understood and construed narrowly, confined only to the strict Hindu religious practices unrelated to the culture and ethos of the people of India, depicting the way of life of the Indian people. Unless the context of a speech indicates a contrary meaning or use, in the abstract these terms are indicative more of a way of life of the Indian people and are not confined merely to describe persons practicing the Hindu religion as a faith.<sup>80</sup>

Considering the terms ‘Hinduism’ or ‘Hindutva’ per se as depicting hostility, enmity or intolerance towards other religious faiths or professing communalism, proceeds from an improper appreciation and perception of the true meaning of these expressions emerging from the detailed discussion in earlier authorities of this Court. Misuse of these expressions to promote communalism cannot alter the true meaning of these terms. The mischief resulting from the misuse of the terms by anyone in his speech has to be checked and not its permissible use. It is indeed very unfortunate, if in spite of the liberal and tolerant features of ‘Hinduism’ recognised in judicial decisions, these terms are

---

79 Ibid.

80 *Prabhoo* (n 76) para 42.



misused by anyone during the elections to gain any unfair political advantage. Fundamentalism of any colour or kind must be curbed with a heavy hand to preserve and promote the secular creed of the nation. Any misuse of these terms must, therefore, be dealt with strictly.<sup>81</sup>

It is, therefore, a fallacy and an error of law to proceed on the assumption that any reference to Hindutva or Hinduism in a speech makes it automatically a speech based on the Hindu religion as opposed to the other religions or that the use of the words 'Hindutva' or 'Hinduism' per se depict an attitude hostile to all persons practicing any religion other than the Hindu religion. It is the kind of use made of these words and the meaning sought to be conveyed in the speech which has to be seen and unless such a construction leads to the conclusion that these words were used to appeal for votes for a Hindu candidate on the ground that he is a Hindu or not to vote for a candidate because he is not a Hindu, the mere fact that these words are used in the speech would not bring it within the prohibition of ... Section 123. It may well be, that these words are used in a speech to promote secularism or to emphasise the way of life of the Indian people and the Indian culture or ethos, or to criticise the policy of any political party as discriminatory or intolerant.<sup>82</sup>

This is the correct premise in our view on which all such matters are to be examined. The fallacy is in the assumption that a speech in which reference is made to Hindutva or Hinduism must be a speech on the ground of Hindu religion so that if the candidate for whom the speech is made happens to be a Hindu, it must necessarily amount to a corrupt practice under ... Section 123 of the R. P. Act. As indicated, there is no such presumption in law contrary to the several Constitution Bench decisions referred to herein.<sup>83</sup>

---

81 Ibid para 43.

82 Ibid para 44.

83 Ibid para 45.

A sincere reading of the judgment makes it clear that the Court did not refer to a single precedent that equated Hinduism with Hindutva. All the cases cited discussed Hinduism as a religion; none Hindutva as a way of life, as the Court argued.<sup>84</sup> It seems that the Court instead buttressed its arguments on the work of Maulana Wahiduddin Khan to equate Hinduism with Hindutva; a travesty of sorts. Khan's argument, controversial in itself,<sup>85</sup> did not equate Hinduism with Hindutva either. The relevant text quoting Khan is copied below:

Ordinarily, Hindutva is understood as a way of life or a state of mind and it is not to be equated with, or understood as religious Hindu fundamentalism. In "Indian Muslims - The Need For A Positive Outlook" by Maulana Wahiduddin Khan, (1994), it is said:

"The strategy worked out to solve the minorities problem was, although differently worded, that of Hindutva or Indianisation. This strategy, briefly stated, aims at developing a uniform culture by obliterating the differences between all of the cultures coexisting in the country. This was felt to be the way to communal harmony and national unity. It was thought that this would put an end once and for all to the minorities problem."  
(at page 19)

The above opinion indicates that the word '*Hindutva*' is used and understood as a synonym of 'Indianisation', i.e., development of uniform culture by obliterating the differences between all the cultures co-existing in the country.<sup>86</sup>

---

84 Kapur (n 73) 328 (The Court, in its interpretation, relied heavily on *Shastri Yagnapurushadji v. Muldas Bhudardas Vaishya*, A.I.R. 1966 S.C. 1119 and *Commissioner of Wealth Tax, Madras v. Late R. Sridharan*, (1976) 4 S.C.C. 478). Kapur, however, argues, "In citing these two decisions to justify its' holding that the Hindutva was a "way of life," the Constitutional Bench in *Prabhoo* seemingly ignored the fact that neither decision mentioned the word "*Hindutva*".)

85 The understanding of Wahiduddin Khan seems controversial from the perspective of the general understanding of Muslim representatives and/or Muslim representative organisations.

86 *Prabhoo* (n 76) para 39.

Kapur argues that the Supreme Court's judgment in *Yeshwant Prabhoo* was problematic for many reasons.<sup>87</sup> First, in its reading of Hinduism with *Hindutva*, the Court failed to recognise the political history of the latter, especially emerging from the works of V.D. Savarkar and M.S. Golwalkar. Second, it assumed that "Hinduism stood for Indianness" thereby rejecting non-Hindu ways of being Indian. Third, it assumed that the majority's understanding of "Indianness" represented the political and cultural aspirations of all Indians, thereby constructing "a uniform national culture that was Hindu in its essence". Finally, it failed to appreciate the "broader discursive and legal struggle over the meaning of secularism in India" where "the Hindu Right has been a protagonist". As a result, "the Hindu Right's version of secularism was formally sanctioned in Indian legal discourse".<sup>88</sup> This is evidenced in the 1998 BJP Manifesto which, argues Kapur:

...not only [acted] as an endorsement of the "true meaning and content of *Hindutva* as being consistent with the true meaning and definition of secularism" but also [did] vindicate and validate its movement to begin the construction of the temple at Ayodhya.<sup>89</sup>

## RE-ORIENTING THE FREEDOM OF RELIGION

One of the central arguments in *Ismail Faruqi* was the sanctity of the mosque which renders it immune from acquisition. It was argued that irrespective of the fact whether a mosque is of "particular significance to the practice of religion of Islam", it cannot be acquired because of

---

87 Kapur (n 74) note 10 ("The *Manohar Joshi* case is often considered to be the main opinion and the decision that is most often referred to on the *Hindutva* cases. However, the *Prabhoo* decision provides the main opinion on the specific question of whether *Hindutva* constitutes a violation of the Representation of the People Act. On this point, the opinion in *Manohar Joshi* simply refers to the opinion in *Prabhoo*.")

88 Ibid 115.

89 Kapur (n 73) 330.

its “special status in Mahomedan law”.<sup>90</sup> Therefore, acquisition of a mosque by the State would be in violation of the freedom of religion enshrined in articles 25 and 26 of the Constitution.

The majority judgment disagreed with such an understanding on three grounds – *first*, that places of religious worship could be acquired under State’s sovereign power of acquisition; *second*, that mosques could be acquired as per the dictates of Mohammedan Law; *third*, that mosque is not essential for the performance of *namaz*. The relevant extracts supporting this understanding are copied below:

... It is impossible to read into the modern Limitation Acts any exception for property made wakf for the purposes of mosque whether the purpose be merely to provide money for the upkeep and conduct of a mosque or to provide a site and building for the purpose. While their Lordships have every sympathy with the 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 to the wakf, or that it is not so possessed so long as it is referred to as “mosque” or unless the building is razed to the ground or loses the appearance which reveals its original purpose.<sup>91</sup>

Section 3 (26) of the General Clauses Act comprehends the categories of properties known to Indian Law. Article 387 of the Constitution adopts this secular concept of property for purposes of our Constitution. A temple, church or mosque etc. are essentially immovable properties and subject to protection under Articles 25 and 26. Every immovable property is liable to be acquired. Viewed in the proper perspective, a mosque does not enjoy any additional protection which is not available to religious

---

<sup>90</sup> *Ismail Faruqi* (n 59) para 65.

<sup>91</sup> *Citing Mosque known as Masjid Shahid Ganj and Others v. Shiromani Gurdwara Prabhandhak Committee, Amritsar A.I.R. (1940) P.C. 116, 121 at para 70.*

places •of worship of other religions.<sup>92</sup>

On how Mohammedan Law supports the acquisition of a mosque, the Court observed:

It has been contended that a mosque enjoys particular position in Muslim Law and once a mosque established and prayers are offered in such a mosque the same remains for all time to come a property of Allah and the same never reverts back to the donor or founder of the mosque 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 the Namaz can be offered ...In British India, no such protection was given to a mosque and the mosque was subjected to the provisions of statute of limitation thereby extinguishing the right of Muslims to offer prayers in a particular mosque lost by adverse possession over that property.<sup>93</sup>

The correct position may be summarised thus, under the Mahomedan Law applicable in India, title to a mosque can be lost by adverse possession. If that is the position in law, there can be no reason to hold that a mosque has a unique or special status, higher than that of the places of worship of other religions in secular India to make it immune from acquisition by exercise of the sovereign or prerogative power of the State.<sup>94</sup>

On the non-essentiality of a mosque for *namaz*, it said:

While offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice unless the place has a particular significance for that religion so as to form an essential or integral part thereof. Places of worship of any religion having particular significance for that religion, to make

---

92 *Ismail Faruqi* (n 59) para 81.

93 *Ibid* para 80.

94 Citing M. Hidayatullah, *Mulla's Principles of Mahomedan Law* (9th ed) Section 217 at para 82.

it an essential or integral part of the religion, stand on a different footing and have to be treated differently and more reverentially.<sup>95</sup>

A mosque is not an essential part of the practice of the religion of Islam and *Namaz* (prayer) by Muslims can be offered anywhere, even in open ... The right to worship is not at any and every place, so long as it can be practised effectively, unless the right to worship at a particular place is itself an integral part of that right.<sup>96</sup>

The *Ismail Faruqi* judgment had a huge impact on further proceedings in the dispute, especially the Muslim reluctance to argue freedom of religion in the Courts.<sup>97</sup> Kapur argues that where the Hindu parties used the historical and archaeological documentation to demonstrate both sacredness of the site and title over it, Muslim parties used historical material only to establish their legal title to the disputed site, but not their right to religious freedom.<sup>98</sup> The Muslim side largely claimed, "...that Mir Baqi Isfahani ... constructed a mosque at the site in 1528 and that the title over it rested with the mosque ever since that time."<sup>99</sup>

The conclusion that can be drawn from *Ismail Faruqi* with regards to its jurisprudential contribution is aptly portrayed by Kapur:

The case reinforced a normative conception of secularism together with the right to freedom of religion almost exclusively within majoritarian terms while simultaneously reducing the attack on Muslim religious sensibilities that was enacted through the demolition of the mosque as entirely unrelated to religiosity and the pursuit of Hindu majoritarianism through liberal rights discourse. The injury caused to the Muslim religious minority

---

95 *Ismail Faruqi* (n 59) para 78.

96 *Ibid* para 82.

97 We discuss these proceedings in brief later in this chapter.

98 Kapur (n 73) 332.

99 *Ibid*.

community not only becomes unintelligible; the act is reduced to an act of destruction of property that in any case had little significance to the essential practices of the Muslim community. At the same time the religious sensibilities of the Hindu majority remain both understood and protected by ensuring that there would be no interference with the continued offering of their prayers at the disputed site.<sup>100</sup>

## THE POLITICS OF LAW IN *ISMAIL FARUQI*

Insiyah Vahanvati provides a detailed account of the “politics of law”<sup>101</sup> in *Ismail Faruqi*. The relevant extracts are copied below at length. We start with the pre-demolition scenario:<sup>102</sup>

In 1992, the VHP and other Hindu organizations received permission from the Supreme Court to conduct a ‘symbolic *kar seva*,’ which was essentially authorization for a group of *kar sevaks* (religious volunteers) to assemble at the site of the mosque and perform Hindu religious rituals. But this was not the first time the Court had heard a petition for a *kar seva* at the contentious site. Earlier the same year, the Supreme Court had permitted another such *kar seva* in July 1992, only to witness a flagrant violation of the status quo order by the groups of people who had congregated at the site. The act of violation included the illegal construction of a platform at the site of the mosque, which was declared as the foundation of the Ram Temple that would one day replace the Babri Mosque.

Wary of the possibility of another such transgression and contempt of the Court, the bench demanded an assurance from the State Government this time. Before granting permission

---

<sup>100</sup> Ibid para 325-326.

<sup>101</sup> The literature on “Politics of Law” is quite diverse. For an early compilation of representative ideas, see – David Kairys (ed.), *The Politics of Law: A Progressive Critique* (3rd ed. New York : Basic Books 1998);

<sup>102</sup> Insiyah Vahanvati, *The Fearless Judge: The Life and Times of Justice A.M. Ahmadi* (Juggernaut Books 2024) 138-139.

for the *kar seva*, the Supreme Court Bench comprising Justices Venkatachaliah and G.N. Ray mandated that the Uttar Pradesh State Government, which was under BJP rule, provide a formal undertaking stating that if permission for the *kar seva* was granted, the sanctity of the status quo order would be upheld and not infringed upon again.

In response to this, Kalyan Singh, the Chief Minister of Uttar Pradesh furnished an affidavit assuring the Court of the competence of the state's law and order machinery and stating that negotiations with the *kar sevaks* had been fruitful. However, it also stated that while they were confident of the ability of the law and order department to handle any situation, they would not, under any circumstance, fire upon the *kar sevaks*.

The peculiar framing of the statement coupled with the historical contempt of the court order, created consternation in the courtroom with opposing counsel O.P. Sharma articulating his doubts about the intentions of the Uttar Pradesh government. Sharma's astute observation as recorded in the court order of 28 November 1992 stated,

'Shri Sharma said that once a large mass of humanity is allowed to congregate on the spot, the State Government on its own self-confessed inability or disinclination to use force against the devotees would achieve indirectly what it was forbidden to do directly. Shri Sharma asserts that the previous experience of what happened between 6 and 26 July 1992, should put the court on guard and examine whether the State Government is adopting a stratagem to enable the collection of a large mass of people who ultimately will be allowed to, and formally blamed for taking the law into their own hands and pleading its own helplessness.'

...

Adding to the gravity of the situation, Attorney General Milon Banerji raised urgent concerns on 27 November 1992, alerting the Court about vital intel provided by the Intelligence Bureau,



which pointed to an imminent threat to the mosque. Urging the bench to act in protection of the mosque, the Attorney General informed the court that the situation in Ayodhya was rapidly deteriorating with the arrival of large numbers of men.

Responding to the concern, Justice Venkatachaliah is reported to have stated,

‘Preparation is not an offence. Only on our fullest satisfaction before us that the State Government has failed in its duty will we pass any orders. The *locus penitentium* is still not crossed by them. We will see when they do.’

And so, despite these warnings recorded in the courtroom, Justice Venkatachaliah decided to grant permission for a symbolic *kar seva* just a few days before he was to be sworn in as Chief Justice of India. The foundation was laid for a clash of ideologies and a test of the Court’s authority.

...

Speaking at a seminar in 2010, [Justice Ahmadi] pointed out that Milon Banerji had once again cautioned the Court of the impending dangers to the mosque, but to no avail. “The Court passed an order allowing a symbolic *kar seva*. Had that order not been passed, the mosque would have been standing today,” he said.<sup>103</sup>

Vahanvati describes the post-demolition scenario as follows:<sup>104</sup>

Twelve days after the nightmarish incident, the apex court responded by issuing notices to Kalyan Singh and six senior officers for breach of the undertaking submitted to the Court. But the Court found itself on a back foot when the accused filed their counter-affidavits, which posed embarrassing questions that turned the spotlight back onto the Court’s own role in the

---

103 Ibid 141-142

104 Ibid 142-143

event. After all, Kalyan Singh had plainly stated that they would not use force on the *kar sevaks* under any circumstances, so how could they be faulted for the uncontrolled crowds that breached the security cordons? Questions were also raised regarding the wide publicization of the permission for the *kar seva* granted by the Court and its consequence of attracting larger numbers of Hindus on the day.

Besides, the harsh glare of the media was unrelenting. Why were the warnings of Milon Banerji and O.P. Sharma disregarded when considering the petition for the *kar seva*? Why did the Court not act at the time of the first violation of the status quo order six months ago? Did their inaction not encourage the *kar sevaks* to breach the court order once again? Why did the Court grant permission despite Kalyan Singh's blunt refusal to fire upon the *kar sevaks* if they were to lose control over the crowds? Why did the Court allow an unlimited number of people to congregate at the site with no cap placed on the number of *kar sevaks* permitted? These were all tricky questions, which the Court was ill-equipped to answer.

Ironically, the Supreme Court order had become the BJP's legal shield.

Perhaps this was the reason no action was taken against the Uttar Pradesh government for all twenty months of Venkatachaliah's tenure. In the end, Kalyan Singh faced no punishment except for a token one-day imprisonment on a lesser charge of a smaller contempt committed by him five months before the demolition, on the very last day of Justice Venkatachaliah's tenure as Chief Justice of India. Calling it a 'farce' in his personal writings, Justice Ahmadi recounts the sentence that was handed out. The sentence condemned Kalyan Singh to a token imprisonment for the remainder of the day at a time when the Court was to be adjourned in a mere hour or two, thereby signalling the end of the day.

While the Presidential Reference in *Ismail Faruqi* was declined by both the majority and the minority judges, the understanding of Justice A. M. Ahmadi (who sat in minority with Justice Bharucha) is relevant here. Vahanvati notes:<sup>105</sup>

Ahmadi explained [the reasons behind declining the Presidential Reference] in further detail in an interview several years later:

“The dispute, it will be remembered, was that a Rama temple had stood on the disputed site and it was demolished to make place for the disputed structure (Babri Masjid); the question posed, however, is: Was there “a Hindu temple or any Hindu religious structure” on the disputed site? Secondly, the salient fact as to whether the temple, if any, was demolished to make place for the disputed structure is not to be gone into... In other words, we were being asked to give an opinion on whether there existed a temple or a Hindu religious structure, not whether a Rama temple existed. However, the cause of the dispute was that a Rama temple had been demolished to build the Babri Masjid in 1528 AD. It was akin to shifting the goalpost, so to speak.”

Vahanvati traces the conditions which led to split verdict in *Ismail Faruqi* as follows:<sup>106</sup>

Under intense pressure to succumb to the majority on the bench, Justice Ahmadi put pen to paper many decades later, revealing for the first time details about that period. Judicial deliberations on the Reference having concluded, a meeting of the bench was called to discuss the matter of *Ismail Faruqi vs. Union of India*.

As he walked into the room, Ahmadi noticed that while Justices Venkatachaliah, Ray and Verma were present at the meeting, strangely, Justice Bharucha was not. The judges present began the meeting with the perfunctory opening remarks, and then

---

105 Ibid 153-154.

106 Ibid 155.

produced a draft judgment that had evidently been prepared in advance, asking Justice Ahmadi to peruse and endorse it.

Ahmadi raised a primary objection that Justice Bharucha was not present at this meeting, and it was improper to conduct these discussions in his absence. To this he was told, '*Once we four agree, he too will agree.*' Uncomfortable with this reasoning, Ahmadi nevertheless agreed to look at the draft.

Having read through the draft, however, he found that in validating the *Acquisition of Certain Area at Ayodhya Act*, the bench would be tacitly sanctifying the acts of trespass and destruction that had taken place — all offences under the Indian Penal Code. Not least because there was no mention of any adverse consequences for the parties who had allowed or participated in the demolition, nor any orders of status quo against both communities offering prayers at the site.

Of course, he was unwilling to do this. Recognizing the meeting for what it was, Ahmadi told the Chief that he would sign their draft if they amended it to include the allocation of a small piece large enough for a moulvy (Islamic priest) to spread his mat and offer namaaz on the land parcel, thereby maintaining the right of the Muslims to offer prayers there too — especially since the effect of the Act would include retaining the idols where they had been placed and requiring the pujas to continue in the manner that they had been done since the demolition, indefinitely.

Recoiling at the suggestion, the Chief Justice and his two colleagues refused outright. At this point Justice Ahmadi expressed his inability to continue further discussions on the topic and left.

Vahanvati further notes:<sup>107</sup>

We know of the extent of the pressure he was under at this

---

107 Ibid 156-157.

time not only through Justice Ahmadi's private writings and conversations with him, but also through the memories of his children and grandchildren. One that sticks out is a particular phone call that was received one evening when the family was in the middle of dinner.

The secretary in the office at the time called on the phone in the family room, which also doubled up as an informal dining room where the family would gather to spend time together on most evenings. Answering the intercom, Justice Ahmadi asked for the call to be transferred to his bedroom — a clear indication that the contents of the call were expected to be confidential.

Leaving his mound of khichdi and mutton curry half eaten on the plate, he left the room to attend to the phone call. Continuing with our meal, we thought nothing of this somewhat common occurrence, until a few minutes later we heard the booming voice of Aziz Ahmadi thunder from all the way down the bottom of the corridor:

“I don't care about becoming Chief Justice, I won't do it!”

Like a sharp slap, the room fell into stillness as we exchanged uneasy glances and waited for him to return to the dining table. That night he did not. Because he never revealed who was sat the other end of that phone call, all we could do was speculate.

## THE MINORITY OPINION IN *ISMAIL FARUQI*

Justices Ahmadi and Bharcha observed:

Ayodhya is a storm that will pass. The dignity and honour of the Supreme Court cannot be compromised because of it.<sup>108</sup>

The minority opinion argued that the vesting the “whole bundle of rights”<sup>109</sup> with respect to the disputed site in the hands of the Government, without any limitation or express conditions would be in violation of the constitutional scheme.<sup>110</sup> It further argued that the Act allows maintenance of *status quo* with respect to the worship of the idols placed at the disputed site while depriving the Sunni Waqf Board of any opportunity to challenge the same based on adverse possession.<sup>111</sup> It observed that the Presidential Reference further narrows the scope of the available remedies. Criticising the Reference, it observed:

What is to happen to the disputed site is to depend upon the answer to the question posed in the Reference and negotiations based thereon. The question posed in the Reference is: whether a Hindu temple or any other Hindu religious structure existed prior to the construction of the disputed structure on the disputed site ... The dispute, it will be remembered, was that a Ram temple had stood on the disputed site and it was demolished to make place for the disputed structure; the question posed, however, is: was there “a Hindu temple or any Hindu religious

---

<sup>108</sup> *Ismail Faruqi* (n 59) para 152.

<sup>109</sup> The whole bundle of rights would include the right, title and interest pertaining to the disputed site.

<sup>110</sup> *Ismail Faruqi* (n 59) para 123 (“There is no provision in the Act which indicates in clear terms what use the whole bundle of property and rights, including the disputed site, will be put to by the Central Government.”)

<sup>111</sup> *Ibid* para 133 (“The effect...is that the Sunni Wakf Board, which administered the mosque that was housed in the disputed structure, and the Muslim community lose their right to plead adverse possession, of the disputed site from 1528 until 1949, if not up-to-date, considering that the idols remained in the disputed structure only under the orders of the courts.”)

structure" on the disputed site.<sup>112</sup>

The Bench argued that the Act, "being slanted in favour of one religious community as against another," was in violation of the principle of secularism.<sup>113</sup> It broadened the constitutional contours of secularism in the following words:

Secularism is given pride of place in the Constitution. The object is to preserve and protect all religions, to place all religious communities on a par. When, therefore, 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 pervert public order, using for the purpose such means and forces of law and order as are required.<sup>114</sup>

It further argued:

It is impermissible under the provisions of the Constitution for the State to acquire that place of worship to preserve public order. To condone the acquisition of a place of worship in such circumstances is to efface the principle of secularism from the Constitution.<sup>115</sup>

Ahmadi and Bharucha emphasised:

Exercise of the right of the individual to profess, practice and propagate religion is subject to public order. Secularism is absolute; the State may not treat religions differently on the ground that public order requires it.<sup>116</sup>

---

<sup>112</sup> Ibid para 133.

<sup>113</sup> Ibid para 134.

<sup>114</sup> Ibid para 140.

<sup>115</sup> Ibid.

<sup>116</sup> Ibid para 143.

The Bench declined to respond to the Presidential Reference arguing that the Court is “ill equipped to examine and evaluate [the historical and archaeological material as evidence]”.<sup>117</sup> Additionally, the Reference “does not serve any constitutional purpose”<sup>118</sup> and the Central Government would anyways not settle the dispute “in terms of the Court’s opinion”.<sup>119</sup> Underscoring such scepticism, it observed:

It leaves us in no doubt that even in the circumstance that this Court opines that no Hindu temple or Hindu religious structure existed on the disputed site before the disputed structure was built thereon, there is no certainty that the mosque will be rebuilt.<sup>120</sup>

---

117 Ibid para 151.

118 Ibid para 149.

119 Ibid para 150.

120 Ibid.





## CHAPTER 5

# THE CULMINATION OF *AYODHYA* LOGIC IN THE TITLE DISPUTE



The *Ismail Faruqi* case can be understood as an aberration in the Babri Masjid-Ram Janmabhoomi dispute. Since the beginning the dispute was framed as a title dispute between the parties, till the demolition happened. We have already discussed what happened in *Ismail Faruqi*. It is important now to understand how the same title dispute was pursued by the appellate courts post-*Ismail Faruqi*. Before we venture into that, however, it is important to understand the sequence of events.

### THE CASES COMPRISING THE AYODHYA TITLE SUIT

As Parmanand writes, after the dismissal of the original suit by the Judicial Commissioner, Oudh in 1886 nothing happened till 1934. In 1934, communal riots erupted which led to destruction of some portion of the Babri Masjid. In 1946, the Waqf Commissioner held that Babri Masjid was a Sunni mosque.<sup>121</sup> On 22/23 December 1949, Hindu idols were placed under the Babri Masjid dome.<sup>122</sup> Due to

---

121 Parmanand Singh, 'Legal History of the Ayodhya Litigation' (1991) 18(2) Indian Bar Review 31 cited in Noorani (Vol. 1) (n 52) 189.

122 Radio message by District Magistrate K.K.K. Nayar to the Chief Minister, Chief Secretary and Home Secretary, *Indian Express* (30 March 1986) cited in Noorani (Vol. 1) (n 52) 211 (K.K.K. Nayar

the worsening law and order situation, on 29 December 1949, the Additional City Magistrate, Faizabad-cum-Ayodhya attached the building and appointed the Chairman, Municipal Board, Faizabad-cum-Ayodhya as receiver to take care of the disputed property.<sup>123</sup> Meanwhile the Government declared the site as a “contested area” and locks the entrance.

Eventually, a total of 5 separate civil suits were filed in the case to claim title over the disputed area:

1. *Gopal Singh Visharad v. Zahoor Ahmed and Ors* (Suit No. 2 of 1950)
2. *Sri Paramhansa Ramchandra Das v. Zahoor Ahmed and Others* (Suit No. 29 of 1950)
3. *Nirmohi Akhara & Another v. Babu Priya Dutt Ram and Others* (Suit No. 26 of 1959)
4. *The Sunni Central Board of Waqfs v. Gopal Singh Visharad* (Suit No. 12 of 1961)
5. *Bhagwan Sri Rama Virajman v. Shri Rajendra Singh, Gonda* (Suit No. 236 of 1989)

Suits 1-4 concerned with the management of the worship rituals, protection of the idols from being removed and an injunction against removing the idols/ restraining access to the idols from the Hindu side OR delivery of possession of the mosque and removal of the idols from the Muslim side. It is, however, Suit 5 which is of particular relevance since it claimed title of the property in the name of the idol itself while seeking construction of a temple at the disputed site. Suit 5 was filed

---

relayed the following message on 23 December 1949 at 10:30 am - “A few Hindus entered Babri Masjid at night when the Masjid was deserted and installed a deity there. DM and SP and force al spot. Situation under control. Police picket of 15 persons was on duty at night but did not apparently act.”)

123 S.K. Tripathi, *Indian Express* (Bombay, 30 March 1986) cited in Noorani (Vol. 1) (n 52) 218.

in supersession of all the other title Suits (1-4).<sup>124</sup> Eventually, all the title suits were put up before to the Allahabad High Court in 1989.<sup>125</sup>

## JUDGMENT OF THE ALLAHABAD HIGH COURT

The Lucknow Bench of the Allahabad High Court began hearing the Ayodhya Title Dispute in April 2002. It delivered a staggering 8,189 pages judgment on 30 September 2010 dividing the disputed land in the ration of 2:1 between the Hindu and the Muslim parties – 1/3 to the Hindus, 1/3 to Nirmohi Akhara and 1/3 to Sunni Waqf Board.<sup>126</sup>

While the judgment dictated partition of the property, Justices Sibghat Ullah Khan, Sudhir Agarwal and Dharam Veer Sharma, rendered separate judgments, with Sharma dissenting.

Justice Khan put emphasis on the title of the disputed site while acknowledging the religious importance of it for the Hindus. He expected the Muslims to have a more accommodative view about the Hindu sentiments:

Muslims must also ponder that at present the entire world wants to know the exact teaching of Islam in respect of relationship of Muslims with others... Indian Muslims have also inherited huge 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.<sup>127</sup>

---

<sup>124</sup> Noorani classified it as “supersession”. Noorani (Vol. 2) (n 52) 218.

<sup>125</sup> The Suits were classified by the High Court as follows - *Gopal Singh Visharad* as Other Original Suit (O.O.S.) No. 1 of 1989; *Nirmohi Akhara* as O.O.S. No. 3 of 1989; *Sunni Central Board of Waqfs* as O.O.S. No. 4 of 1989 and *Bhagwan Sri Ram Virajman* as O.O.S. No. 5 of 1989. In addition to these Suits, two Writ Petitions were also considered by the High Court – *Mohd. Hashim v. District Judge, Faizabad and Others* (No. 746 of 1986) and *U.P. Sunni Central Board of Waqfs v. District Judge Faizabad and Others* (No. 3106 of 1986)

<sup>126</sup> Satya Prasoon, ‘Timeline: Key Events in the Babri Masjid – Ram Mandir Controversy’, *Supreme Court Observer* (22 October 2018) <<https://www.scobserver.in/journal/timeline-key-events-in-the-babri-masjid-ram-mandir-controversy/>>

<sup>127</sup> *Ayodhya Title Dispute*, Allahabad High Court (2010) (Khan, J.) 279-280

Justice Agarwal accepted the fact that there was a non-Islamic structure that stood before the construction of the mosque.<sup>128</sup> He argued that the deity holds the right to file a suit since its desecration was validated by the doctrinal aspects of the Hindu religion.<sup>129</sup> He argued:

[i]f the public goes for worship considering that there is a divine presence and offer worship thereat believing that they are likely to be the recipient of the bounty of God then it satisfies the test of a temple. Installation of an idol or the mode of worship are not the relevant and conclusive test.<sup>130</sup>

According to Justice Agarwal, the deity was a perpetual minor and there cannot be a claim of either adverse possession or limitation against the deity or any person representing it.<sup>131</sup> He further observed that had Muslims been able to demonstrate that a mosque was of “special significance” to them, a similar argument could have been allowed for them. He wrote:

...this particular mosque...is one of the several mosques and by acquisition of the place it will not have the effect of depriving such fundamental right of Muslims. It is always open to them to offer prayer at any other place like they could have done here but Hindus are not placed on similar footing. According to Hindus, this is a place of birth of lord Rama and that be so, there cannot be any other place for which such belief persists since time immemorial. Once this land is allowed to be lost due to the acts of persons other than Hindus, the very right of this section of people, as protected by Article 25, shall stand destroyed.<sup>132</sup>

---

128 Ibid (Agarwal, J.) 4414-15

129 Ibid 2173

130 Ibid 1977

131 Ibid 2031-33

132 Ibid 2617

He went on to quote, *Ismail Faruqi* to highlight the point that a mosque is “non-essential” for Muslim prayer:

A mosque is not an essential part of the practice of the religion of Islam and namaz (prayer) by Muslims can be offered anywhere even in open. . . . [U]nless the right to worship at a particular place is itself an integral part of that right, i.e., the place is of a particular significance, its alienability cannot be doubted.<sup>133</sup>

Justice Agarwal further argued that Muslims were unable to prove that Babur had “title over the land” and that the construction of the mosque “failed to adhere to the principles of Islam”. However, the demolition of the structure must be compensated and, therefore, Muslims must be compensated with one-third of the land.<sup>134</sup>

Justice Sharma in his dissenting opinion argued that the dispute is not between private parties but between religious communities. He wrote:

...the present suit is a representative suit and plaintiffs are representing the interest of Muslims and defendants have been arrayed representing the interest of Hindus.<sup>135</sup>

What is even more interesting is how he classified the dispute. According to him:

...the dominant issue in the present dispute pertains to the legal adjudication of matters relating to the Hindu faith.<sup>136</sup>

Additionally, he put great emphasis on the Report of the Archaeological Survey of India (ASI) observing that:

It is not a matter of dispute now that in the modern age Archaeological Science has achieved the great accuracy. Thus with the assistance of Archaeological Science, one can answer

---

133 Ibid 4412

134 Ibid 5077

135 Ibid (Sharma, J.) 206. The Muslim side seems to not have contested this position. Kapur (n 87) note 189.

136 Ayodhya Title Dispute (n 127) (Sharma, J.) (Vol. 4) 28

up to the considerable degree of certainty about various past activities of people for which material evidence is available.<sup>137</sup>

Justice Sharma read Article 25 of the Constitution for the Hindus in the following words:

[A]s the Suit premises is the Birth Place of the Lord of Universe Sri Rama and his invisible power is present in the said Sthandil [sic. a piece of open ground] the Hindus have superior fundamental right to worship at that sacred place according to injunctions of their Sacred Scriptures in comparison to the fundamental right of the Muslims to offer their prayer at that place which is not integral part of Muslim religion.<sup>138</sup>

Having arrived at the conclusion that the disputed site was the birthplace of Ram and that the birthplace of Ram itself was a deity for the purpose of holding property, Justice Sharma observed that the property belonged to the deity itself.<sup>139</sup> Also, since the deity was a perpetual minor, the site could not be taken either through conquest or else adverse possession.<sup>140</sup> Therefore, the title over the site could be understood to have never been lost or transferred. He argued:

Lord Ram as the Avatar (Reincarnation) of Vishnu, having been born at Ayodhya at the Janmasthan is admittedly the core part of Hindu belief and faith which is in existence and practiced for the law thousands of years.<sup>141</sup>

The most interesting aspect of Sharma's opinion was his reading of "religion", beyond the confines of faith and conscience. He also included practice "in pursuance of religious belief" as part of religion.<sup>142</sup> He argued: "Religious practices are as much part of religion

---

137 Ibid.

138 Ibid 182.

139 Ibid 167.

140 Ibid.

141 Ibid 121.

142 Ibid 128.

as faith or belief in actual doctrine.”<sup>143</sup>

## CRITIQUE OF THE ALLAHABAD HIGH COURT JUDGMENT

The judgment has been criticised by many. Kapur argues that Justice Khan’s decision that the property should be divided into three parts was “curious” because as per the 1949 position the property could only be divided into two parts going to the Muslims and the Hindus.<sup>144</sup> Additionally, in his decision to transfer the central dome to the idols, Justice Khan seemed to have ignored the fact that the idols were placed illegally into it in 1949.<sup>145</sup>

Kapur criticises Agarwal’s judgment on two counts – *first*, that it creates an epistemic hierarchy where the Hindu claims are given preference over the Muslim claims; *second*, that the question of “essentiality” had to be addressed in a subjective fashion, favouring Hindus. She writes:

Implicit in Justice Agarwal position is that while the disputed site was sacred to Hindus and that worship there was an essential practice of the Hindu faith, the Muslims should not feel that they were being deprived of all rights. Given that a mosque had been destroyed, some level of compensation needed to be provided to the Muslim groups to assuage the sense of injustice they were experiencing, but it would not be at the cost of the Hindu right to worship precisely at the spot where the mosque once stood.<sup>146</sup>

According to Kapur, Justice Sharma’s argument that to dispossess Hindus from the site would be to “extinguish a core ingredient of the

---

<sup>143</sup> Ibid 126.

<sup>144</sup> Kapur (n 73) 342.

<sup>145</sup> Ibid.

<sup>146</sup> Ibid note 187.



Hindu religion, which is the birthplace of Ram” was deeply flawed.<sup>147</sup> She writes:

In the process of declaring that the right to worship at the disputed site was a core ingredient of the Hindu faith, Justice Sharma essentialized and ossified the Hindu tradition against any notions of plurality, diversity or fluidity.<sup>148</sup>

Similarly, the argument that the deity is a perpetual minor and as a result of which no suit against it could be treated as time barred, has received criticism of many scholars.<sup>149</sup>

According to Kapur, *Ismail Faruqi* played a central role in helping Justices Agarwal and Sharma arrive at their understanding about the non-essential nature of the mosque.<sup>150</sup> Unfortunately, the judges ended up rejecting the plurality of traditions within the Hindu faith. She wrote:

While the right to worship is an important component of freedom of religion, both Justice Agarwal and Justice Sharma held that the right to worship on the exact spot where god was born was a core or essential ingredient of the Hindu faith and part of the collective belief of the community. In the process they not only rejected the plurality of tradition within the Hindu faith, they centred one particular position. Hindus and scholars alike have contested the position taken by the two judges, who considered worship at the site a core ingredient. The fact that large tracts of Hindus do not worship Ram nor even recognize him as a noted deity challenges the claim that

---

147 Ibid 350.

148 Ibid.

149 Ibid note 175.

150 Ayodhya Title Dispute (n 127) (Sharma, J.) Vol. 4 164 and (Agarwal, J.) 2551–52 relying on *Ismail Faruqi* (n 59) 417 (“While offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice unless the place has a particular significance for that religion so as to form an essential or integral part thereof.”)

worship at his ostensible birthplace is a core ingredient of the Hindu tradition.<sup>151</sup>

Rachel Varghese argues that the judgment of the Allahabad High Court was flawed in treating the ASI's Report in an objective fashion. She highlights that unlike judicial enquiries which are oriented towards "truth" in an objective fashion, archaeology is an interpretative discipline which does not attempt to establish truth objectively.<sup>152</sup> Unfortunately, the High Court painted archaeology "as an 'advanced' science which can bypass the fallibility of human agency by adherence to technology and procedure".<sup>153</sup> In the process, the Court constituted archaeology as "legal evidence", marking the "emergence of a new hybrid episteme" which is "determined both by conventions of ASI archaeology and the requirements and structure of legal disputes".<sup>154</sup>

Guha argues that this was "the first instance in the history of Indian archaeology where the discipline's principal method (i.e. excavations) has been legally endowed with the potentials for unearthing the

---

151 Kapur (n 73) 350-351. The understanding of the High Court was criticised by many. Kapur provides a brief literature review - Kumkum Roy, 'Issues of Faith', *Economic and Political Weekly* (December 11, 2010) 53 (who argues that the court ignored the polytheism in Hindu religion and de-recognized the diversity of faith. She posits a critical question as to whether the recognition of a personal god is intrinsic to secularism); see also Nivedita Menon, 'The Ayodhya Judgement: What Next?', *Economic and Political Weekly* (July 30, 2011) 81, 86-87. At the same time, some progressive scholars have also argued that the case opens the possibility of recognizing the importance of faith in individual human life. See Lata Mani, 'Where Angels Fear to Tread: The Ayodhya Verdict', *Economic and Political Weekly* (October 16, 2010) 10, 11; Ashish Nandy, 'The Judges Have Been Injudicious Enough to Create a Space for Compassion and Human Sentiments', *Tehelka* (November 6, 2010) 16.

152 Also, Sudeshna Guha, 'Negotiating Evidence: History, Archaeology and the Indus Civilisation' (2005) 39(2) *Modern Asian Studies* 399, 401 ("Therefore, the selection of archaeology to legitimize the politics of *Hindutva* has not come as a surprise. For, compared to other disciplines in the humanities, and history in particular, archaeology's investigative techniques, of which many are science based, can effectively be evoked for cultivating the notion that archaeological methodology is truth-making.")

153 Rachel Varghese, 'Archaeology for the Courtroom: The Ayodhya Case and the Fashioning of a Hybrid Episteme' (2024) 24(2) *Journal of Social Archaeology* 109, 115

154 Ibid 111.

'truth'."<sup>155</sup> Interestingly, this happened with significant impunity, where the "ASI was regarded as 'experts of expert' in acknowledgement of its regulatory power over archaeological practice throughout India."<sup>156</sup>

Varghese argues that the ASI's work was not independent; rather it worked under the control of the High Court so much so that the latter often interfered in its overall functioning. Since there was no precedent where a commission was appointed to conduct an archaeological enquiry, the Court held much leeway in deciding the approach of the ASI.<sup>157</sup> She observes:

A close examination of the orders related to the excavations, its conduct as described in the judgement, and the Report reveals judicial interference with the archaeological process in Ayodhya at multiple levels... At one point during the excavations, the Excavation Director was substituted through a court order... The effective control over the excavations was thus with the court.<sup>158</sup>

While the ASI was revered, the final authority of interpretation rested with the Court. This allowed the judges to push their own understanding as interpretation of the submitted Report. Varghese highlights:

For instance, while the ASI report did not conclude that the previous structure at the site was demolished to build Babri Masjid, both Agarwal and Sharma reached this conclusion through their own interpretation of the findings. Khan on the other hand used the findings of the ASI in conjunction with other material and concluded that no temple was demolished for the construction of the mosque.<sup>159</sup>

---

<sup>155</sup> Guha (n 152) 399.

<sup>156</sup> Varghese (n 153) 118.

<sup>157</sup> Ibid 117.

<sup>158</sup> Ibid 114.

<sup>159</sup> Ibid 119.

The strange nature of the emerging argument is captured by Varghese in the following words:

The orientation of legal disputes towards decisive resolution and their adversarial structuring mediated how archaeology was practised and employed in Ayodhya. In the absence of precedent cases, the scope of archaeology as evidence was derived from erstwhile observations made by the judiciary on unrelated fields.<sup>160</sup>

## SUPREME COURT JUDGMENT

*M. Siddiq*<sup>161</sup> was decided as a title suit purely based on the settled principles of property law.<sup>162</sup> In order to claim title to the disputed site the parties had to produce “documents of title” either from a sovereign, a state or previous owner. None of the parties could produce any document.<sup>163</sup>

The Muslim side attempted to establish the title to the site on four grounds – 1. a specific grant by Mughal Emperor Babur to the Muslims; 2. through doctrine of “lost grant” (arguing that the Muslims had a specific grant from Babur which was somehow lost); 3. through “waqf by user”; 4. through “adverse possession” of the disputed site from 1528. None of these claims, according to the Supreme Court, were successfully established.<sup>164</sup>

The Hindu side attempted to establish title to the disputed site on three grounds – 1. existence and continuation of title since 12th century; 2. the land itself was a deity; 3. Hindus were in possession of the disputed site since time immemorial. None of these claims, again,

---

<sup>160</sup> Ibid.

<sup>161</sup> *M. Siddiq* (n 14).

<sup>162</sup> Editor’s Note, *M. Siddiq (Dead) through Legal Representatives v. Mahant Suresh Das and Others* (2020) 1 Supreme Court Cases 1, 4.

<sup>163</sup> Ibid.

<sup>164</sup> Ibid.

were established.<sup>165</sup>

The Court finally proceeded to establish ownership of the site through the “doctrine of possessory title” – that there was long unimpeded continuous and exclusive possession on behalf of either party (Section 110, Indian Evidence Act, 1872). The Court made clear that belief and faith were “irrelevant” to the question of either the title or the possession. However, the act of “actual physical worship” was of significance to demonstrate possessory title.<sup>166</sup>

According to the Court, the Hindu side was able to demonstrate:

... exclusive user (based on acts of actual worship and presence of symbols of actual worship) for at least 100 years if not 240 years prior to 1857 of the entire ... [disputed site] *plus* exclusive possession of the outer courtyard after 1857 *plus* non-exclusive user (based on acts and symbols of actual worship) of the inner courtyard after 1857, until 1949/50.<sup>167</sup> (Emphasis in original)

However, the Muslim side could only demonstrate:

... non-exclusive user (based on acts and symbols of actual worship) of the inner courtyard after 1857, until 1949/50.

The Supreme Court held that only Suits 4 and 5<sup>168</sup> were the main suits to determine the title of the disputed site. Since Suits 4 and 5 sought title over the *entire* corpus of the dispute site, the High Court was wrong in ordering partition of the disputed site. Suits 1 and 3, the Court held, were not central to the dispute at hand.<sup>169</sup> The Court went on to hold that the Hindu side was able to demonstrate possessory

---

<sup>165</sup> Ibid.

<sup>166</sup> Ibid.

<sup>167</sup> Ibid.

<sup>168</sup> For more information on Suit 4 and 5, see above.

<sup>169</sup> Suit 1 sought for a mere right to worship whereas Suit 3, which was found barred by the limitation period, sought only *shebaiti* rights pertaining to the control and management of the worship of the idol.

title to the entire disputed site. To compensate for the demolition of the mosque, the Court directed the government to grant of 5 acres of suitable land for the erection of the mosque.

Some of the important observations made by the Court in arriving at its decisions, with proper context, are listed below. The Court argued: The law cannot be used as a device to reach back in time and provide a legal remedy to every person who disagrees with the course which history has taken. The courts of today cannot take cognisance of historical rights and wrongs unless it is shown that their legal consequences are enforceable in the present.<sup>170</sup>

It observed:

The mere existence of a structure underneath the disputed property cannot lead to a legally enforceable claim to title today...This Court cannot entertain or enforce rights to the disputed property based solely on the existence of an underlying temple dating to the twelfth century.<sup>171</sup>

It further noted:

The construction of the railing in 1858 to separate and maintain law and order between the two communities is premised on the worship of both religious communities at the disputed property. If either community was not present at the disputed site, no question of needing to separate the two communities could have ever arisen. The Hindus however maintained immediate and continued contest over their exclusion from the inner courtyard.<sup>172</sup>

---

170 *M. Siddiq* (n 14) para 978.

171 *Ibid* paras 993-994.

172 *Ibid* para 995.

Citing the jurisdiction of the Court emerging from the British period due to the operation of Articles 372 and 296 of the Constitution,<sup>173</sup> the Court observed:

Under our rule of law, this court can adjudicate upon private property claims that were expressly or impliedly recognised by the British sovereign and subsequently not interfered with upon Indian independence. With respect to the disputed property, it is evident that the British Sovereign recognised and permitted the existence of both Hindu and Muslim communities at the disputed property upon the annexation of Oudh in 1856. This culminated with the construction of the railing in order to maintain law and order between the two communities. The acts of the parties subsequent to the annexation of Oudh in 1856 form the continued basis of the legal rights of the parties in the present suits and it is these acts that this Court must evaluate to decide the present dispute.<sup>174</sup>

The Court situated the dispute in the historical context as follows:

The significant aspect of the case which has been pleaded... is the construction of the mosque in 1528 A.D. and its use by Muslims for the purpose of offering prayer thereafter. But, a crucial aspect of the evidentiary record is the absence of any evidence to indicate that the mosque was, after its construction, used for offering namaz until 1856-7.

While there were ample facts to indicate that the land was originally granted by Babur for the construction of a mosque at the site and the British authorities did recognise the title over the

---

173 Article 296: "...any property in the territory of India which, if this Constitution had not come into operation, would have accrued to His Majesty or, as the case may be, to the Ruler of an Indian State by escheat or lapse, or as bona vacantia for want of a rightful owner, shall, if it is property situate in a State, vest in such State, and shall, in any other case, vest in the Union...". Article 372: "...subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority..."

174 *M. Siddiq* (n 14) para 997.

land from such grant, the Supreme Court relied on the flawed reasoning of Justice Agarwal from the High Court judgment.<sup>175</sup>

It observed that the language based on which the grant is being established by the Sunni Waqf Board:

...appears to be a copy of some register “but it is an extremely torn document and the contents on page 163 are almost illegible.”<sup>176</sup>

Additionally, the Court argued:

The document states that there is “no knowledge of the date of grant” and the name of the donor/grantor is “on the basis of testimony”.<sup>177</sup>

The Court also relied on the curious observations of Justice Agarwal to reject any Muslim claim to the site before 1856-57:

In any case, these documents only show that a financial assistance was provided by the British Government for the purpose of the mosque in question but this by itself may not be a proof that the building in dispute was used by Muslims for offering Namaz or for Islamic religious purposes to the extent of ouster of Hindu people or otherwise.<sup>178</sup>

Thus, the Supreme Court accepted the fact that the grant of the land and financial assistance under Emperor Babur was indeed carried forward in the British time was not conclusively proved. Even if it gets established, it did not prove that the place was used by Muslims to offer namaz.<sup>179</sup>

---

175 Ibid paras 1030-1034.

176 Ibid para 1030.2

177 Ibid para 1031

178 Ayodhya Title Dispute (n 127) (Agarwal, J.) para 2336.

179 M. Siddiq (n 14) para 1034.5.



Having accepted the facts that indicated the construction of a railing after the 1857 riots, which allowed separate spaces for Muslims and Hindus for their prayer, the Court argued that the petition of 1885<sup>180</sup> was not relevant for the purpose of determination of the title since it only pertained to construction of a temple on the *chabutra* and nothing more.<sup>181</sup>

The Court recognised “Waqf by User” as part of the Indian law. It observed:

Our jurisprudence recognises the principle of waqf by user even absent an express deed of dedication or declaration. Whether or not properties are waqf property by long use is a matter of evidence. The test is whether the property has been used for public religious worship by those professing the Islamic faith. The evidentiary threshold is high, in most cases requiring evidence of public worship at the property in question since time immemorial.<sup>182</sup>

In order to establish the waqf by user, the Muslim side should have been able to demonstrate unimpeding possession of the disputed site, which according to the Court was not true:

...insofar as the outer courtyard was concerned, the Hindu devotees were in settled possession and actively practicing their faith. This possession of the Hindu devotees over the outer courtyard was open and to the knowledge of the Muslims. Several incidents between 1857 and 1949... indicate that the possession of the inner courtyard was a matter of serious contest. The Muslims did not have possession over the outer courtyard. There is a lack of adequate evidence to establish that there was exclusive or unimpeded use of the inner courtyard [by

---

180 See, Panikkar (n 45).

181 *M. Siddiq* (n 14) para 1056.

182 *Ibid* para 1134.

the Muslims] after 1858.<sup>183</sup>

As for the contention that the disputed site was a *waqf by user*, the Court observed:

The doctrine of *waqf by user* is well established in our law. However...it is a doctrine of necessity to deal with cases where a property has been the site of long and consistent religious use by members of the Islamic faith but the original dedication is lost to the sands of time... the contention that the entire property was a single composite *waqf* cannot be assessed in a vacuum. The Court cannot ignore the evidence of established religious worship by Hindu devotees within the premises of the disputed site. If the contention...that the entire disputed property is a *waqf by user* is accepted, it would amount to extinguishing all rights claimed by the Hindus in the disputed property as a site of religious worship.<sup>184</sup>

Supreme Court also read the claim of *waqf by user* in the context of the precedents cited by the Muslim side. It argued that a longstanding claim from the Hindu side in the case at hand, made the claim of *waqf by user* non-acceptable:

In the decisions adverted to above in which claims of a *waqf by user* have been recognised, the claims were not made in the context of another religious community also utilising the property for the conduct of religious worship. It flows that the consequence of recognition of a *waqf by user* in the facts of these cases did not lead to the extinguishing of competing and legally tenable rights of another religious community.<sup>185</sup>

The Court, therefore, argued:

The law recognises that where, since time immemorial, worship

---

183 Ibid para 1137.

184 Ibid para 1138.

185 Ibid para 1139.

has been offered at a land with a mosque, the land is presumed to have been dedicated for a religious purpose and even absent a dedication, is waqf by user. However, this may not be extended to the extinguishment of competing and established religious rights of another community in the same property...<sup>186</sup>

In the absence of the acceptance of ownership title by grant and waqf by user, the Muslim side claimed “adverse possession”. It argued that due to the long-possession and use of the site by the Muslims, the original title, if ever it was with the Hindus, was lost. The Court observed:

The evidence in the records indicate that Hindus, post the setting up of the railing [in 1858] have, in any event, been in possession of the outer courtyard. On this basis alone, the plea of adverse possession...in respect of the entirety of the area... must fail.<sup>187</sup>

The Muslim side also argued for the applicability of the “doctrine of lost grant”, which allowed a party to claim title based on mere possession under the presumption that it had the title which it failed to furnish. The Court, holding otherwise, argued that the doctrine did not apply in the case, more importantly because it cannot confer title upon the parties but could only support the claim of any title through the evidence of possession.<sup>188</sup>

It was observed that no documentary evidence was produced to prove the title from 1528-1860 on behalf of the Babri masjid. Interestingly, whatever evidence was produced only pertained to the revenue records, which in no manner conferred title over the disputed site.<sup>189</sup> The Court summarised the entire argument in the following words:

---

186 Ibid para 1140.

187 Ibid para 1156.

188 Ibid para 1174.

189 Ibid para 1181.

No documentary evidence has been brought on the record indicating the conferment of title in a form of the grant of the land underlying the mosque. The documentary evidence on which reliance has been placed essentially consists of grants which were made by the British Government for the upkeep and maintenance of the mosque. These grants are stated to be in continuation of those which have been made previously prior to the annexation of Oudh by the colonial government. The register...which bears government orders dated 13 March 1860 and 29 June 1860 has been noticed in the judgment of Justice Sudhir Agarwal [Allahabad High Court] as a document which is torn and the contents of which were not legible. The grant for the upkeep and maintenance of the mosque was “so long the masjid is kept up and the Mohammedans conduct themselves properly”. This document even if it is accepted as authentic indicates a grant for specific purposes and does not confer the title to the disputed land. The register of enquiry dated 14 March 1860 contains certain details of a rent-free grant and is stated to be “based on testimonies”. However, it shows that “the year and date are not known”. As regards the date of the grant, it has been stated to be of “no knowledge”. There is a reference in the register to an enquiry into the rent-free land (which) began in the year 1264 Fasli when riots broke out. The reference to 1264 Fasli corresponds to 1856-7 A.D. While the name of the donor is stated to be Babur, this account is based on testimony.<sup>190</sup>

The documentary evidence, according to the Court, established that:

- i. Prior to 1856-7 there was no exclusion of the Hindus from worshipping within the precincts of the inner courtyard;
1. The conflagration of 1856-7 led to the setting up of the railing to provide a bifurcation of the places of worship between the two communities;

---

190 Ibid para 1183.

- ii. The immediate consequence of the setting up of the railing was the continued assertion of the right to worship by the Hindus who set up the Chabutra in the immediate proximity of the railing
- iii. Despite the existence of the railing, the exclusion of the Hindus from the inner courtyard was a matter of contestation and at the very least was not absolute;
- iv. As regards the outer courtyard it became the focal point of Hindu worship both on the Ramchabutra as well as other religious structures within the outer courtyard including Sita Rasoi. Though, the Hindus continued to worship at the Ramchabutra which was in the outer courtyard, by the consistent pattern of their worship...there can be no manner of doubt that this was in furtherance of their belief that the birth-place of Lord Ram was within the precincts of and under the central dome of the mosque; and
- v. The riots of 1934 and the events which led up to 22/23 December 1949 indicate that possession over the inner courtyard was a matter of serious contestation often leading to violence by both parties and the Muslims did not have exclusive possession over the inner courtyard. From the above documentary evidence, it cannot be said that the Muslims have been able to establish their possessory title to the disputed site as a composite whole.<sup>191</sup>

The Court argued that, in the absence of indications as to the clear title, it was the establishment of “possessory title” that held the key. It observed:

In assessing the title of the Muslims, the physical structure of the mosque is one fact to be taken into consideration. But a claim to possessory title has to be based on exclusive and unimpeded

---

191 Ibid para 1188.

possession which has to be established by evidence...The claim to title will have to be judged from the perspective of long and continued possession. It becomes relevant to note the extent to which the Muslims have asserted their claim to the entirety of the property, which forms a composite whole, comprised of the inner and outer courtyards in comparison with the contesting claims of the Hindus.<sup>192</sup>

The Court read Section 110 of the Indian Evidence Act, 1872<sup>193</sup> in the following manner:

Section 110 is based on the principle that possession in and of itself may raise a presumption of title. But this applies when the facts disclose no title in either of the disputants in which case, as it is said, possession alone decides. Hence, on the other hand, it is also well-settled that the presumption cannot be arise when the facts are known.<sup>194</sup>

Further, it observed:

In assessing...the applicability of Section 110 the crucial test is whether the disputed site represents “anything of which” the Muslim parties are “shown to be in possession”. Unless the “shown to be in possession” requirement is fulfilled, the presumption would not arise and there would be no question of placing the burden of establishing that the plaintiffs...are not the owners on the contesting Hindu parties.<sup>195</sup>

Yet again, the Court argued:

The case of the... [Muslim side]... has to be evaluated on the basis of the entirety of the evidence on the record to deduce whether possession has been established on a preponderance

---

<sup>192</sup> Ibid para 1179.

<sup>193</sup> Section 110: Burden of proof as to ownership.—When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

<sup>194</sup> Ibid para 1194.

<sup>195</sup> Ibid para 1199.

of probabilities.<sup>196</sup>

The Court argued:

The...case of possession to attract the applicability of Section 110 of the Evidence Act must therefore be assessed from two perspectives: First, insofar as the outer courtyard is concerned, it is impossible to accept on the basis of a preponderance of probabilities that the Muslims were in possession. On the contrary, the establishment of Hindu places of worship in the outer courtyard clearly belies such a claim. Second, insofar as the inner courtyard is concerned, the claim of the Muslims must necessarily be assessed with reference to various time periods namely (i) prior to 1856; (ii) between 1856 and 1934; and (iii) after 1934.<sup>197</sup> (Emphasis added)

The Court observed:

The Muslim account of worship prior to 1856 is conspicuously silent as opposed to the accounts of worship being offered by the Hindus...Though, the claim of the Muslims over the inner courtyard was not abandoned [from 1858-1949], yet as the evidence indicates, this was a matter of contestation and dispute.<sup>198</sup>

On the ASI Report, the Court observed:

While the ASI report has found the existence of ruins of a pre-existing structure, the report does not provide:

- i. The reason for the destruction of the pre-existing structure.
- ii. Whether the earlier structure was demolished for the purpose of the construction of the mosque.
- iii. Since the ASI report dates the underlying structure to the twelfth century, there is a time gap of about four centuries

---

196 Ibid para 1200.

197 Ibid para 1201.

198 Ibid para 1202.

between the date of the underlying structure and the construction of the mosque. No evidence is available to explain what transpired in the course of the intervening period of nearly four centuries.

- iv. The ASI report does not conclude that the remnants of the pre-existing structure were used for the purpose of constructing the mosque (apart, that is, from the construction of the mosque on the foundation of the erstwhile structure).
- v. The pillars that were used in the construction of the mosque were black Kasauti stone pillars. ASI has found no evidence to show that these Kasauti pillars are relatable to the underlying pillar bases found during the course of excavation in the structure below the mosque.<sup>199</sup>

The Court, therefore, concluded:

A finding of title cannot be based in law on the archaeological findings which have been arrived at by ASI. Between the twelfth century to which the underlying structure is dated and the construction of the mosque in the sixteenth century, there is an intervening period of four centuries. No evidence has been placed on the record in relation to the course of human history between the twelfth and sixteen centuries. No evidence is available in a case of this antiquity on (i) the cause of destruction of the underlying structure; and (ii) whether the pre-existing structure was demolished for the construction of the mosque. Title to the land must be decided on settled legal principles and applying evidentiary standards which govern a civil trial.<sup>200</sup>

As for the accounts of the travellers (chiefly *Tieffenthaler* and *Montgomery Martin*), the Court made the following observations:

...the accounts of the travellers must be read with circumspection.

---

199 Ibid para 1206

200 Ibid para 1207



Their personal observations must carefully be sifted from hearsay – matters of legend and lore. Consulting their accounts on matters of public history is distinct from evidence on a matter of title. An adjudication of title has to be deduced on the basis of evidence sustainable in a court of law, which has withstood the searching scrutiny of cross-examination. Similarly, the contents of gazetteers can at best provide corroborative material to evidence which emerges from the record...Title cannot be established on the basis of faith and belief alone. Faith and belief are indicators towards patterns of worship at the site on the basis of which claims of possession are asserted.<sup>201</sup>

On demolition of the structure, the Supreme Court paid lip service. It observed:

On 6-12-1992, the structure of the mosque was brought down and the mosque was destroyed. The destruction of the mosque took place in breach of the order of status quo and an assurance given to this Court. The destruction of the mosque and the obliteration of the Islamic structure was an egregious violation of the rule of law.<sup>202</sup>

As regards the judgment of the High Court, the Supreme Court observed:

In assessing the correctness of the decree of the High Court, it must be noted at the outset that the High Court was not seized of a suit for partition...[It] has adopted a path which was not open to it in terms of the principles formulated above. It granted reliefs which were not the subject matter of the prayers in the suits. In the process of doing so, it proceeded to assume the jurisdiction of a civil court in a suit for partition, which the suits before it were not.<sup>203</sup>

---

201 Ibid para 1209

202 Ibid para 1222.

203 Ibid paras 1227-1229.

Arguing that dividing the land would not serve much purpose, it observed:

The disputed site admeasures all of 1500 square yards. Dividing the land will not subserve the interest of either of the parties or secure a lasting sense of peace and tranquillity.<sup>204</sup>

It, therefore, added:

The High Court has completely erred in granting relief which lay outside the ambit of the pleadings and the cases set up by the plaintiffs in Suits 3, 4 and 5... Moreover, the claim by the Nirmohi Akhara was as a shebait who claimed a decree for management and charge. On its own case, Nirmohi Akhara could not have been granted an independent share of the land.<sup>205</sup>

The Court finally held:

While determining the area of land to be allotted, it is necessary to provide restitution to the Muslim community for the unlawful destruction of their place of worship. Having weighed the nature of the relief which should be granted to the Muslims, we direct that land admeasuring 5 acres be allotted to the Sunni Central Waqf Board either by the Central Government out of the acquired land or by the Government of Uttar Pradesh within the city of Ayodhya.<sup>206</sup>

Highlighting the reasons, it observed:

The allotment of land to the Muslims is necessary because though on a balance of probabilities, the evidence in respect of the possessory claim of the Hindus to the composite whole of the disputed property stands on a better footing than the evidence adduced by the Muslims, the Muslims were dispossessed upon the desecration of the mosque on 22/23 December 1949 which

---

204 Ibid para 1237.

205 Ibid paras 1231-1232.

206 Ibid para 1239.

was ultimately destroyed on 6 December 1992. There was no abandonment of the mosque by the Muslims.<sup>207</sup>

On the scope of Article 142, the Court made the following observations:

This Court in the exercise of its powers under Article 142 of the Constitution must ensure that a wrong committed must be remedied. Justice would not prevail if the Court were to overlook the entitlement of the Muslims who have been deprived of the structure of the mosque through means which should not have been employed in a secular nation committed to the rule of law. The Constitution postulates the equality of all faiths. Tolerance and mutual co-existence nourish the secular commitment of our nation and its people.<sup>208</sup>

With regards the transfer of title to the disputed site, the Court held:

...it would be necessary to direct the Central Government to frame a scheme in exercise of the powers conferred upon it by Sections 6 and 7 [of the Acquisition of Certain Area at Ayodhya Act 1993] to set up a trust or any other appropriate mechanism to whom the land would be handed...The scheme shall incorporate all provisions necessary to vest power and authority in relation to the management of the trust or the body chosen for the vesting of the land... having regard to the historical presence of Nirmohi Akhara at the disputed site and their role, it is necessary for this Court to take recourse to its powers under Article 142 to do complete justice. Hence, we direct that in framing the scheme, an appropriate role in the management would be assigned to the Nirmohi Akhara.<sup>209</sup>

---

207 Ibid para 1238.

208 Ibid para 1238.

209 Ibid paras 1241-1242.

## CRITIQUE OF THE SUPREME COURT JUDGMENT

While the judgment was criticised expansively, we offer only a couple of points as illustration to establish the lacunae.

The most interestingly aspect of the judgment is that it falsified Muslim claims and not Hindu claims. Nowhere in *M. Siddiq* did the Court engage with the Hindu claim to title over the disputed site. Instead what emerges is that any rebuttal of the Muslim claim established the Hindu claim automatically, and without any conditions attached.<sup>210</sup> The judgment did not test the Hindu claims on merits, even though it was the Hindu side which claimed the possession/title over the site and not the Muslims to begin with.

This is very interesting – the Court itself presumed that the title is already well settled and the facts are established already in favour of the Hindu side. Having said that, the Court still did not rely on the alleged remains of a previous Hindu architecture beneath the structure; the following observation of the Court is relevant here:

The mere existence of a structure underneath the disputed property cannot lead to a legally enforceable claim to title today...This Court cannot entertain or enforce rights to the disputed property based solely on the existence of an underlying temple dating to the twelfth century.<sup>211</sup>

Would the observation by D.Y. Chandrachud (Former Chief Justice of India) that the construction of the Masjid was in itself “an act of desecration” hold any ground in this context?<sup>212</sup>

---

210 See for instance, *M. Siddiq* (n 14) para 1034.5.

211 Ibid paras 993-994.

212 Interview of D.Y. Chandrachud, ‘Faith vs evidence? DY Chandrachud on Ayodhya, Gyanvapi, and ‘guidance from God’ (NewsLaundry 24 September 2025) < <https://www.newsLaundry.com/2025/09/24/faith-vs-evidence-dy-chandrachud-on-ayodhya-gyanvapi-and-guidance-from-god> >

According to Nair and Brunner, the Court's decision to hand-over the complete site to the Hindus was done "notwithstanding its finding that no one had established a clear title to the inner courtyard – the area where the Babri Masjid sat."<sup>213</sup> While the judgment tried to "block out any future attempts at contesting the validity of places of worship", it remained unclear "whether the bar on conversion applie[d] equally to even those places of worship which were not in existence on August 15th 1947." Additionally, the Supreme Court also did not answer "whether the Parliament [could] carve out exceptions similar to the one for Ram Janmabhoomi-Babri Masjid".<sup>214</sup>

The judgment is also structured in an interesting fashion. The Court began the dispute after the 1856 revolt and the construction of the railing dividing the courtyard of into inner and outer portions (describing the Hindu and Muslim possessions effectively). The Court then moves ahead to argue that Muslims were unable to establish their possession over the disputed site from 1528 (when the *Babri Masjid* was constructed) till 1856.

It is interesting that the statements of 13 witnesses demonstrating that they offered namaz in the Babri masjid on a regular basis was not accepted by the Supreme Court. The Court mostly relied on the understanding of the High Court that the witness' statements were not reliable due to weak memory (mostly established by the poor recall of their age/year of birth!).<sup>215</sup> The Court accepted the Hindu possession of the outer-courtyard beginning 1856-57, but did not accept the fact the namaz was continuously conducted in the inner courtyard by the Muslims since the same period.

---

213 Balu Nair and Jay Brunner, 'Ayodhya Judgment: Opening the Floodgates?' *Supreme Court Observer* (8 November 2019) < Ayodhya Judgment: Opening the Floodgates? - Supreme Court Observer >

214 Ibid.

215 M. Siddiq (n 14) paras 1062-1095.

Again, take for instance, the reliance of the Court on the curious observations of Justice Agarwal to reject any Muslim claim to the site before 1856-57:

In any case, these documents only show that a financial assistance was provided by the British Government for the purpose of the mosque in question but this by itself may not be a proof that the building in dispute was used by Muslims for offering Namaz or for Islamic religious purposes to the extent of ouster of Hindu people or otherwise.<sup>216</sup>

The question remains, why the Court did not engage with the Hanumangarhi episode of 1855 which preceded the events post-1856. We have highlighted at least one account, by K.M. Pakinnar, which makes the Hanumangarhi episode extremely relevant for Court's attention. We have not gone through the petitions before the Supreme Court. It might have been that none of the parties brought the 1855 episode before the Court (we may be wrong in our assumption as well). Even in that scenario, there was no limitation on the Court to disregard such facts or even ignore their existence.

The Court must have understood that whatever it decides is going to also define the nature of law and not just this dispute only. Effectively, what the Supreme Court has held is now defining the nature of possessory title to an immovable property; more precisely, the establishment of faith as an evidence to claim possessory rights.

---

216 Ayodhya Title Dispute (n 127) (Agarwal, J.) para 2336



## CHAPTER 6

# HOW *AYODHYA LOGIC* OPERATES: THE ROLE OF JUDICIARY SO FAR



Based upon The Places of Worship Act, it was submitted that what had happened at Ayodhya on 6th December, 1992, could never happen again. The submission overlooks the fact that the Indian penal Code contains provisions in respect of offences relating to religion...Those who razed the disputed structure to the ground on 6th December, 1992, were not deterred by [Section 295 of the Indian Penal Code]...Others similarly minded are as little likely to be deterred by the provisions of the Places of Worship Act.<sup>217</sup>

It is four decades now since a mosque was forcibly occupied and converted into a temple and the country's legal system has completely failed to redress the wrong. This is an understatement...That this was, and yet remains, part of a movement which seeks likewise to occupy and convert the mosques at Mathura (adjoining the Krishna Janmasthan) and Varanasi (at Kashi Vishwanath Mandir) makes it sinister.<sup>218</sup>

---

217 Ismail Faruqi (n 52) para 139 (per Bharucha and Ahmadi, JJs.)

218 AG Noorani, 'Legal Aspects to the Issue' in S. Gopal (ed.), *Anatomy of a Confrontation: The Babri Masjid-Ram Janmabhumi Issue* (Penguin Books 1991) 58, 58.



## TIMELINE OF GYANVAPI, SHAHI EIDGAH AND OTHER DISPUTES

Aarathi Ganesan provides the timeline of the dispute in good detail:<sup>219</sup>

**1991:** BJP opposes the passage of the Places of Worship Bill in the Parliament. It, however, welcomes the exception granted to the Babri Masjid-Ayodhya dispute and seeks its extension to the “Krishna Janmabhoomi dispute” in Mathura and to the “Kashi Vishwanath dispute” in Varanasi. This extension was never granted. Post-demolition of the Babri Masjid, a slogan gained popularity amidst Hindutva groups – “Ayodhya toh bas jhaanki hai, Kashi, Mathura baaki hai” (Ayodhya is just the beginning, Kashi and Mathura remain).

**1991:** The first petition surrounding the Gyanvapi mosque enters courts in 1991. The petition was filed by some priests from Varanasi in the district court seeking access to pray within the mosque. It was alleged that the mosque was built on the ruins of the Kashi Vishwanath temple. The petition also sought a transfer of the mosque’s land to Hindus.

**1998:** The mosque Management Committee’s challenge to the petition, which they claimed violated the 1991 Act, was dismissed by the lower court in 1998. It then approached the Allahabad High Court—which stayed the proceedings the same year.

**December 2019:** The matter resurfaces post-Ayodhya verdict by the Supreme Court. In December 2019, barely a month after the Ayodhya verdict, a fresh petition was filed at a Varanasi Civil Court seeking an archaeological assessment of the Gyanvapi mosque’s origins. The petitioner appeared as a ‘next friend’ of Swayambhu Jyotirling Bhagwan Vishweshwar—the deity at Kashi Vishwanath.

---

219 Aarathi Ganesan, ‘350 Years of the Gyanvapi Dispute: A Timeline’ *Supreme Court Observer* (27 May 2022) < 350 Years of the Gyanvapi Dispute: A Timeline - Supreme Court Observer> We have taken the timeline from 1991 because Ganesan’s framing of the events before 1991 (except the 1984-1991 period) do not provide credible references.

**March 2020:** The 1991 plaintiffs approached the Civil Court in Varanasi to hear the original petition again. The proceedings were stayed by the Allahabad High Court in February 2020—it reserved Judgment on the matter in March 2020.

**October 2020:** Advocate Ashwini Kumar Upadhyay filed a Writ Petition at the Supreme Court challenging the constitutionality of Sections 2, 3, and 4 of the Places of Worship (Special Provisions) Act, 1991. The petition argues that the Act bars judicial review—an irrevocable basic structure of the Constitution—while also violating the principles of secularism. He further argues that the cut-off date particularly harms the interests of Hindus, Sikhs, Buddhists, and Jains, as it does not allow them to restore places of worship destroyed during pre-independence British and Islamic regimes. The petition further contended that mosques built on destroyed temples were not valid mosques under Muslim personal law—therefore, destroyed temples are still temples in the eyes of the law. Former Chief Justice of India Sharad Bobde issued notice in the matter—however, it remains pending before the Court.

**April 2021:** Despite the stay by the Allahabad High Court in Gyanvapi dispute, the matter was reopened by a Varanasi Civil Court in April 2021—Fast Track Court Civil Judge (Senior Division) Ashutosh Tiwari ordered an Archaeological Survey of India investigation into the mosque’s origins.

**August 2021:** Five Hindu women filed a petition at a Varanasi Civil Court seeking permission to worship the Maa Shringaar Gauri, Ganesh, Hanuman, and Nandi idols allegedly located within the Gyanvapi mosque. The women are affiliated with the Vishwa Vedic Sanatan Sangh.

**September 2021:** The Gyanvapi mosque’s Management Committee approached the Allahabad High Court, which once again stayed the proceedings on September 9th, 2021. It came down heavily on the Civil Court for proceeding despite

the High Court reserving Judgment on the matter.

**April 2022:** Civil Judge (Senior Division) Ravi Kumar Diwakar appointed Ajay Kumar Mishra as Advocate Commissioner. Mr. Mishra was to conduct a ‘videographic survey’ of the Gyanvapi mosque and determine the existence of the Hindu idols. The mosque’s Management Committee protested as the Hindu petitioners had suggested Mr. Mishra’s name. They approached the Allahabad High Court to stay the survey—the petition was dismissed by the Allahabad High Court on 21 April 2022.

**May 2022:** The survey commenced on 6 May 2022, amidst communally charged protests. On May 7th, the mosque’s Management Committee approached the Varanasi Civil Court praying for Mr. Mishra’s removal due to his allegedly biased surveying. On May 12th, the Court rejected the application—additionally authorising officials to file FIRs against those hindering the survey.

**May 2022:** On May 13th, the mosque’s Management Committee presented its challenges to the videographic survey before the Supreme Court. It requested a stay of the proceedings at the Varanasi Civil Court. Senior Advocate Huzefa Ahmadi, appearing for the mosque’s Management Committee, further argued that the survey violates Section 4 of the Places of Worship Act, which prohibits filing a suit to change a place of worship’s religious character post August 15th, 1947. The Supreme Court refused to stay the survey, however, it agreed to list the matter before a Bench led by Justice D.Y. Chandrachud the following week—who was part of the 5-Judge Constitution Bench in the Ayodhya Title Dispute.

**May 2022:** On May 16th, before the SC hearings began or the survey’s report was filed, the Varanasi Civil Court ordered the Varanasi District Magistrate to seal an area within the mosque—where a *shiv lingam* had allegedly been found. *Namaz* would be restricted at the mosque to protect the *shiv lingam*. This finding

was presented to the Civil Court in the absence of the mosque's Management Committee—who later claimed that the structure was a fountain.

**May 2022:** On May 17th, Justices Chandrachud and P.S. Narasimha began hearing the case. Chandrachud J was part of the Constitution Bench that delivered 2019's Ayodhya verdict. Narasimha J, appeared for the Hindu parties in the proceedings while he was still practising as a Senior Advocate. The Bench, seeking to strike a balance, ordered that the *shiv lingam* remain protected—however, it clarified that Muslim devotees will be allowed to offer *namaz*. It listed the next hearing for May 19th, 2022. The same day, Varanasi Civil Court removed Mr. Mishra as Advocate Commissioner, after Special Advocate Commissioner, Vishal Singh, alleged that he had leaked footage from the video survey to the media. Mr. Singh and an Assistant Advocate Commissioner were directed to complete the remainder of the survey.

**May 2022:** May 17th also saw the Narendra Modi Vichar Manch, a Hindu group from Karnataka, allege that the Masjid-e-Ala in Srirangapatna was built on top of a destroyed Hanuman temple. Claiming that Muslim ruler Tipu Sultan destroyed the temple, the outfit approached local administrators seeking both a survey into the matter and permission for Hindus to worship on the mosque's premises.

**May 2022:** On May 18th, the Akhil Bharat Hindu Mahasabha wrote a letter to Prime Minister Narendra Modi requesting the excavation of Hindu idols allegedly buried under the steps of New Delhi's Jama Masjid.

**May 2022:** On May 19th, the Supreme Court Bench deferred hearings by a day and stayed all proceedings in the matter at the Varanasi Civil Court until it heard the matter on May 20th—after the Order, the Civil Court listed the matter for hearing on May 23rd. The same day, the Survey Committee submitted two

reports to the Varanasi Civil Court on its findings. The debris of Hindu temples was found on the mosque's northern and western flanks. Hindu symbols and iconography were visible on pillars located in the mosque's basement. Large panels were found that were '*sindoor* coloured'—which the petitioners claim are the remnants of the Maa Shringar Gauri idols. On May 19th, Danish Quereshi, Gujarat spokesperson for the All India Majlis-e-Ittehadul Muslimeen, was arrested for a 'controversial' social media post on the Gyanvapi mosque.

**May 2022:** On May 20th, the Supreme Court transferred the case to the 'more seasoned hand' of a Varanasi District Judge. Justice Surya Kant was added to the Bench for the day's proceedings, during which the need to maintain 'balance' and 'fraternity' in the matter was emphasised. While hearing the mosque's challenge that the survey violates the Places of Worship Act, 1991, the Bench noted that investigating the nature of a place of worship is not the same as altering it. It directed the District Judge to prioritise the mosque Management Committee's challenge to the maintainability of the Hindu petition, however, it did not specify whether the Judge can rely on the Survey Committee's report while deciding the matter. The Court's May 17th Order protecting both the *shiv lingam* and regular *namaz* at the mosque would remain in force until the District Court delivered its verdict. As the Bench closed hearings for the day, an unprecedented number of devotees gathered at Gyanvapi mosque to offer *namaz*—despite the mosque issuing an appeal to not crowd the premises. Similar scenes of larger crowds at a disputed site were reportedly witnessed in 1992, in the run-up to the demolition of Babri Masjid.

**May 2022:** On May 20th, a Mathura District Court admitted a plea seeking the transfer of the land on which Shahi Idgah mosque stands to the Krishna Janmabhoomi Sthal. The mosque is allegedly built on top of the prison where the Hindu deity Krishna is believed to be born.

**May 2022:** In Bhopal, the Sanskriti Bachao Manch approached the state for an archaeological survey into the city's Jama Masjid—which is allegedly built on a Shiva temple. The Manch is preparing to file a civil petition at a Court in Bhopal. The same day, New Horizon Public School in Bengaluru sent an email to its alumni—asking them to change the name of 'Gyanvapi mosque' on Google Maps to Gyanvapi temple.

**May 2022:** On May 23rd, District Judge Ajaya Krishna Vishvesha began hearings in the Gyanvapi dispute. On the same day, the Maharashtra Navanirman Sena alleged that Pune's Punyeshwar and Narayaneshwar were destroyed by Alauddin Khilji of the Delhi Sultanate—rallying the public to support its campaign to 'free temple land'. A Delhi University professor, arrested the previous week for a 'malicious' social media post commenting on the Gyanvapi mosque dispute, was granted bail by the Delhi High Court.

**May 2022:** On May 24th, the Varanasi District Court announced that on May 26th it would consider the suit filed by the mosque's Management Committee, challenging the maintainability of the petition filed by the five Hindu women. It also gave both parties one week to file their complaints against the survey commission's report. A fresh plea was filed before the SC by Advocate Ashwini Kumar Upadhyay, seeking its intervention in the dispute. Amongst other arguments, it submitted that a deity's property continues to be its own—even if illegally taken possession of by other religious groups. The same day, the leaders of the Vishwa Vedic Sanatan Sangh filed a fresh plea before Civil Judge (Senior Division) Ravi Kumar Diwakar—from whom the case was transferred by the SC to the District Judge. The plea sought that Muslims be banned from entering the mosque and that the complex be handed over to Hindus. On May 25th, the plea was later transferred by the District Court to a fast-track Court.

**May 2022:** In Mangalore, temple-like structures were found during an excavation of the Malali mosque on May 24th. Hindu organisations planned to hold rituals outside the mosque—forcing the police to enforce Section 144 of the Code of Criminal Procedure, 1973, which empowers local officials to issue orders to prevent apprehended danger.

**July 2022:** On July 18th, the Supreme Court agreed to hear a plea seeking permission to conduct ‘puja’ and ‘darshan’ on the Gyanvapi mosque premises, to a Shivling claimed to be situated in the Mosque. Further, the petition asks for a ground penetrating radar survey and carbon dating of the Shivling by the Archaeological Survey of India. The plea additionally sought possession of the Shivling, while the Masjid Committee adamantly claimed that the structure was a fountain.

**July 2022:** On July 21st, Senior Advocate Huzefa Ahmadi, appearing for the Gyanvapi Mosque Management Committee, challenged the Allahabad High Court’s decision which upheld the Varanasi Civil Court’s Order to form an Enquiry Commission to assess the alleged Hindu origins of the mosque. He disagreed with the High Court’s Judgment that the Commission’s findings were harmless and pointed out that the Mosque premises were sealed because of the Commission’s findings. The Supreme Court, while initially disinclined to entertain the challenge, finally decided to leave the petition pending until the District Judge decided on the legality of the Order forming the Commission.

**August 2022:** On August 24th, 2022, Advocate Shamin Ahmad, appearing for the Masjid Committee argued that the Gyanvapi mosque was the property of the Waqf Board, which had the sole right to hear any matter pertaining to the mosque. District Judge A.K. Vishvesha, however, reserved his order until September 12th after both sides had concluded their arguments.

**September 2022:** On September 12th, 2022, the Varanasi District Judge A.K. Vishvesha delivered the Order rejecting the Waqf Board's arguments that the Hindu women's plea seeking permission to worship at the disputed site be dismissed. The District Judge instead directed the matter to be heard next on September 22nd, 2022, to frame the issues to be considered by the Court.

**November 2024:** A local court in Sambhal, Uttar Pradesh, issued an order directing the Archaeological Survey of India (ASI) to survey the 500-year-old Shahi Jama Masjid. The petition, filed by a group of Hindu plaintiffs, alleged that the mosque had been constructed in 1529 over the ruins of the *Haribar Temple*. Within hours, the judge appointed an advocate commissioner to carry out an initial survey, which was done the same day. When ASI officials returned for a second survey, violence erupted, and at least five people were killed. The court order was criticised for its undue haste in ordering the survey.<sup>220</sup>

The Court's order conflicted with the Places of Worship (Special Provisions) Act, 1991, which freezes the religious character of all places of worship as of 15 August 1947, with the sole exception of the Ram Janmabhoomi–Babri Masjid site. Sambhal falls outside this exception.<sup>221</sup>

---

220 Clarion India, 'Haste in Ordering Survey of Jama Masjid in UP's Sambhal Draws Widespread Outrage' (20 November 2024) <https://clarionindia.net/haste-in-ordering-survey-of-jama-masjid-in-ups-sambhal-draws-widespread-outrage/>

221 For more details on the disputes, see - Ajoy Sinha Karpuram, '10 Pending Suits in Mosque-Temple Disputes, from Sambhal to Mathura' (The Indian Express, 13 December 2024) <https://indianexpress.com/article/explained/explained-10-pending-suits-mosque-temple-disputes-9721868/>



## THE LONG-LASTING EFFECTS

What we see here is that through a sequence of decisions and omissions that cumulatively favoured majoritarian claims, a new judicial logic has been produced. Each missed opportunity embedded a pattern: a judicial reluctance that effectively enforced the altered status quo, a reliance on archaeology as dispositive evidence despite academic disputes, and an interim permission to worship that became a permanent change.

Sambhal and Gyanvapi both reflect the replication of a template in which litigation is framed as a neutral “fact-finding” or “investigatory” exercise, allowing courts to sidestep the restrictions of the Places of Worship Act. Court-sanctioned surveys then become the evidentiary foundation for expanding majoritarian claims. Interim permissions to worship, granted while cases remain pending, gradually normalise an altered religious character of the site; over time, this shift can be justified through appeals to “collective memory,” as the change becomes embedded in public perception. In effect, what begins as a procedural step becomes a substantive shift in the site’s status, creating a legal and social reality that is difficult to reverse.

What is alarming in recent cases is how even timelines are also compressed; where the Ayodhya dispute unfolded over decades, Sambhal moved from petition filing to violence in a matter of days. Viewed comparatively, these cases show how judicial interpretations, procedural manoeuvres, and Hindu majoritarian political agendas can work together to erode statutory procedures, turning what should be exceptional orders, such as the one in Ayodhya that permitted Hindu worship within the Babri Masjid compound, into a reproducible legal strategy. By embedding these methods into judicial reasoning, the process enables Hindu majoritarian actors to achieve de facto changes in the usage and ownership of a site without a final

ruling explicitly overturning statutory protections. The outcome is the structural weakening of Muslim religious rights under the law, justified not through direct legislative repeal, but through cumulative precedent and procedural drift.

Until recently, the judiciary, the executive, and political mobilisation in India largely operated on parallel tracks. However, developments surrounding the controversial Waqf (Amendment) Act of 2025, branded under the acronym “UMEED”, signal a shift towards a convergence of these domains. The amendments centralise control over Waqf properties by transferring several powers from the Waqf Board to state-appointed officials, expanding the role of District Magistrates in property disputes, diluting the Muslim composition in Waqf, and undermining religious autonomy. The Act has, in fact, made it easier to challenge Waqf ownership. This shift practically transforms the multi-track process of targeting Muslim religious property into a single, legally sanctioned and more expedient apparatus of dispossession.

For a community already politically and economically marginalised, the loss of property undermines not only material assets but also the spatial and institutional foundations necessary for exercising other rights, thereby deepening Muslim structural exclusion from public life.

Thus, the entrenchment of Hindutva reasoning within the judicial fabric emerges not as a product of isolated controversial verdicts but as an outcome of a sustained and deliberate convergence between political ideology, executive will, and judicial reasoning. This process normalises exceptional majoritarian demands as legitimate possibilities. It reframes political agitations as civilisational justice, allowing judicial reasoning to absorb its premises, and executive machinery to operationalise them, until the resulting framework

ceases to appear as politics and instead becomes “the law”, thereby institutionalising a legal pathway for the systematic erosion of Muslim religious rights.

## RE-ANIMATION OF AYODHYA: FIVE METHODOLOGICAL PARALLELS

Across the cases, highlighted above, a consistent judicial method emerges:

- a. **Statutory Avoidance:** In *M. Siddiq*, the Places of Worship Act was not read in the right context. In *Gyanvapi* and *Mathura*, it has been acknowledged but rendered functionally irrelevant by reframing disputes as fact-finding exercises or challenges to prior compromise.
- b. **Elevation of Belief to Evidence:** In *Ayodhya*, belief that Lord Ram was born at the disputed site was treated as legal truth. In *Gyanvapi*, the alleged Shivling was treated as *prima facie* evidence of religious injury. In *Mathura*, the belief in Krishna’s janmasthan is judicially treated as a basis to question long-settled compromise.
- c. **Procedural Flexibility for Majority Claims:** In all cases, procedural tools — surveys, archaeological excavations, or compromise reviews — are deployed to allow Hindu litigants entry into disputes that are otherwise barred.
- d. **Judicial Passivity toward Executive Inaction:** In *Ayodhya*, the Court trusted the executive to protect the mosque. In *Gyanvapi* and *Mathura*, the courts have not restrained the escalation of religious mobilisation despite legal protections being in place.
- e. **Rewriting History through Law:** All three cases show how the judiciary becomes a historian, enabling revisionist memory to displace constitutional protection.

The transformation of judicial methodology that began with Ayodhya is now institutionalised. In Gyanvapi and Mathura, courts do not explicitly discard the 1991 Act but reinterpret it to enable civilisational litigation. In doing so, they transform statutory finality into procedural flexibility, allowing majority claims to persist under the guise of historical truth.



## CHAPTER 7

# AFTERWORD



This Report has critically examined how the Indian judiciary has responded to legal and political challenges concerning Muslim religious spaces—especially mosques—by focusing on the Places of Worship Act, 1991, and the judgments in *Ismail Faruqui (1994)* and *M. Siddiq (2019)*. Through a close reading of constitutional texts, legal doctrines, and political discourse, the Report has shown that the judiciary has not remained neutral. Instead, it has steadily shifted towards accommodating the ideological project of Hindu majoritarianism.

At the heart of this transformation lies a growing tendency within the courts to redefine secularism as neutrality in form but not in effect. While the courts have claimed to treat all religions equally, their judgments reveal selective reasoning, strategic omissions, and a willingness to allow majoritarian claims to override constitutional protections for minority rights. What began as judicial restraint has turned into judicial endorsement of political narratives.

### KEY FINDINGS

The Report reaches five central conclusions:

1. **Judicial Doctrines Have Weakened Religious Protection for Muslims:** The essential religious practices (ERP) test, originally meant to protect faith-based practices from state interference, has been turned into a tool that allows the judiciary to determine the limits of religious expression. This has especially harmed Muslims, as courts have ruled that mosques are not essential to Islam and are therefore not fully protected under constitutional law.
2. **The Idea of the Mosque Has Been Reinterpreted:** Courts have increasingly treated mosques as replaceable structures rather than sacrosanct spaces. The legal reasoning in *Ismail Faruqui* and *M. Siddiq* shows how mosques have been reframed as sites that can be acquired, demolished, or relocated without violating constitutional principles—undermining centuries of Islamic theology around waqf and mosque sanctity.
3. **Belief Has Replaced Evidence in Legal Reasoning:** Especially in *M. Siddiq*, the Court privileged Hindu belief in Lord Ram’s birthplace over legal ownership or historical continuity. Faith was used as proof, while legal violations—such as the illegal placement of idols and the demolition of the Babri Masjid—were acknowledged but carried no consequences. This reflects a major shift from rights-based adjudication to sentiment-driven justification.
4. **Secularism Has Been Hollowed Out:** Indian secularism has traditionally meant the equal treatment of all religions and protection for religious minorities. In recent judgments, however, secularism has come to mean the equal distribution of symbolic gestures—such as giving five acres to Muslims in exchange for the loss of the Babri Masjid—while enabling the capture of contested sites by the majority. This shift from substantive equality to formal parity marks a dangerous erosion of constitutional values.

5. **Legal Precedents Are Now Favouring Ideological Expansion:** The combination of *Faruqui* and *Siddiq* has created a doctrinal environment that encourages further litigation against Muslim religious sites. Hindu groups have already begun targeting mosques in Varanasi, Mathura, and other cities. Courts, instead of blocking these claims using the Places of Worship Act, have shown a tendency to reinterpret the Act in ways that allow these cases to proceed.

## LEGAL AND POLITICAL RECOMMENDATIONS

To defend the principles of constitutional democracy and religious equality, and to resist the growing normalisation of majoritarian legal claims, this Report offers the following recommendations:

### A. For the Judiciary and Legal System

1. **Reform the Essential Practices Doctrine:** The ERP test must be re-examined by the Supreme Court. Courts should not decide what is essential to a religion; this must be left to the religious community itself, within reasonable constitutional limits.
2. **Restore the Sanctity of Sacred Spaces:** Mosque spaces governed by waqf law must be treated as inalienable, not ordinary property. The legal tradition that treats mosque land as perpetual religious endowment must be recognised and upheld in all future judgments.
3. **Strengthen the Places of Worship Act:** The Supreme Court should affirm that the Act prohibits all attempts to revisit the religious character of sites as they stood on 15 August 1947. Exceptions or reinterpretations of this law threaten communal harmony and constitutional stability.
4. **Resist Judicial Populism:** Courts must avoid being swayed by public sentiment or majoritarian pressure. Instead, they



should act as defenders of constitutional rights, especially when those rights are under attack.

## **B. For the Muslim Community and Civil Society**

Muslim leaders, organisations, legal experts, and intellectuals must respond to the emerging legal and political threats with clear strategy, unity, and proactive engagement. The following steps are recommended:

1. **Constitutional Literacy Campaigns:** Launch initiatives to educate Muslim communities—especially youth, mosque committees, and waqf trustees—about their legal rights and the threats posed by recent judicial developments.
2. **Archival and Legal Documentation:** Systematically collect and preserve historical records, revenue documents, waqf deeds, and community testimonies related to mosques and shrines. This is vital for countering fabricated claims in court.
3. **Strategic Legal Action:** File timely interventions and review petitions in key cases, using strong constitutional arguments. Legal teams must avoid defensive strategies and instead demand accountability for violations of rights.
4. **Narrative and Media Engagement:** Use independent media, documentaries, books, and public campaigns to counter the dominant narrative that targets Muslim spaces as illegitimate. The goal must be to humanise, historicise, and normalise Muslim presence in India's public life.
5. **Coalitions for Constitutionalism:** Form alliances with progressive Hindus, Dalit groups, Christian bodies, feminist organisations, students' collectives, and human rights activists. This will help frame the issue not as "Muslim versus Hindu" but as a broader fight for constitutional democracy.

6. **Strengthen Community Institutions:** Waqf boards, religious leaders, and civil society bodies must be made more transparent, responsive, and legally prepared. Internal reform is necessary to ensure effective resistance to external attacks.

## FINAL REFLECTIONS

India today stands at a crossroads. The legal architecture that once promised equality, protection of minority rights, and non-interference in religious affairs is being reworked to serve ideological agendas. If left unchallenged, this trend may lead to the systematic transformation of India's secular character into one that privileges the faith, memory, and claims of one religious community at the cost of all others.

This Report does not offer false hope, but it does affirm that the Constitution still provides tools for resistance. What is required now is collective political will, legal clarity, historical awareness, and moral courage—especially from those who remain committed to India's secular and pluralistic future. Muslim leaders and intellectuals, in particular, must move from a posture of reactive defence to one of principled leadership. The struggle is not only about mosques—it is about the soul of the republic.

## About the Report

Justice and Empowerment of Minorities (JEM) is an initiative of Jamiat Ulama-i-Hind, the country's oldest and largest socio-cultural organisation of Indian Muslims. JEM works to safeguard the human rights of India's minorities by documenting hate crimes, countering hate speech, and providing legal and advocacy support to victims of persecution and discrimination.

Through research, reporting, and engagement, JEM promotes the Rule of Law, equal rights, justice, and peaceful coexistence, while strengthening the constitutional values of dignity, equality, and religious tolerance—contributing to a more inclusive and resilient India.



[www.jem.org.in](http://www.jem.org.in)

---