LEGAL BATTLE AND THE QUEER TURN OF THE JUDICIARY: BABRI MASJID-RAMJANAMABHUMI ISSUE

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ABSTRACT

The communal passions of Hindu-Muslim communities, on Babri Masjid-Ramjanmabhumi matter have been raging for centuries to strike at the communal harmony of India. On 9 November 2019, the Supreme Court paved the way for the construction of Ram Temple on disputed site, where the Babri Masjid existed until 6 December 1992. In this whole crucial issue, judiciary played a rather passive role. The legal battle fought in the court in this case is a typical example of delay, harassment and dilatory tactics. The judiciary as well as government has utterly failed to solve the controversy in a positive or satisfactory way. In the initial stage of legal battle during British judiciary was forthright on this dispute. In later stage after independence judiciary has been uncleared because it wanted to maintain status quo again and again. But in last stage, judiciary has taken queer view far from the expectations of building a network of trust. It can be said after whole analysis of history of legal battle that when Hindu community was going step by step near their target like constructing chabutra, installing idols, opening the locks, demolition etc., after every step judiciary was pronouncing to maintain status quo and in the last, judiciary justified what others considered factually illegal.

The identification of present Ayodhya (Uttar Pradesh) with Ramjanmabhumi is based upon the faith of the Hindu community and has no solid evidence. There is no conclusive proof that the mosque built at the time of Babar, was on a temple site or that a temple had been destroyed to build it.[i]Outwardly, it was a dispute fought for mere ownership of a piece of land, but in a deeper sense, it related with the right to freedom of religion, guaranteed in Article-25 of the constitution. Compared to Shah Bano case, and the discussion on Uniform or separate Civil Codes, this controversy has not been a clear cut matter of legislation on the minority rights, rather, it deals with the legal practices of supposedly secular state India and the need to practically secure the minority rights.[ii] As the Ramjanmabhumi movement lays emphasis on myths and beliefs, rather than facts and democratic decisions, the issue also includes confrontation between religious and secular ideals within politics.

The communal passions of Hindu-Muslim communities, on this matter have been raging for centuries to strike at the communal harmony of India. While the legal file of the subject matter was pending in the judiciary, the declarations of Hindu political and religious organizations for Mandir construction, from time to time, *Rath yatras* of the BJP, provocative speeches of RSS, VHP etc. and opposition of Babri Masjid Action Committee, threatened the peace of society for a long time. On 9 November 2019, the Supreme court paved the way for the construction of Ram Temple on disputed site, where the Babri Masjid existed until 6 December 1992.[iii] Although the judgment marks the closure of legal dispute but it does not address the mistrust among minorities in India. This verdict clearly is not infallible primarily because there is not any convincing proof about the birth place of Ram Lalla, which is more of a belief rather than a fact. Secondly, till 6 December 1992 Babri Masjid stood at the same spot. So the decision is not egalitarian. If the decision could not possible be in favour of masjid then it should have been neutral. In neutral decision the disputed site should have been used for joint purpose a school or college, or a universal service centre. But the decision of Supreme Court is purely based on faith of majority and not on facts. It can be said that the verdict does not address the network of trust and collectiveness but endorses the belief of the majority which may create anxieties for the secular fabric of the country.

Let us go through and analyze the legal history of the dispute to understand, what has been the role of judiciary? The legal history of the dispute goes back to pre-independence period, reveals that in the beginning, the *chabutra* (Platform) constructed on 23 February 1857, inside the

boundary wall of the Babri Masjid, was known as the *Janamsthan* (birth place). In 1857 the *Nawab* of Avadh proclaimed that *namaz* in the mosque by the Muslims and the worship on the *chabutra* by the Hindus, be performed at different times or hours. The legal dispute started in 1885 during the British rule, when *Mahant* (the chief priest), Raghubar Das of Ramjanmsthan, filed a civil suit in the court of Sub-Judge, of Faizabad on 15 January 1885, seeking permission to build a temple on *chabutra* (area of 17 feet by 21 feet situated on the outer enclosure of disputed mosque). Pt. Hari Kishan Singh, the Sub Judge, having heard from the plaintiff that government of U.P and the defendant are undertaking an inquiry, on the spot, in the presence of the parties to the dispute, rejected the plea on the ground of threat to public law and order situation. He considered that if a temple is allowed to be constructed on the *chabutra* which is so close to Masjid, then it would 'lay the foundation of death and murder.'[iv] The referred *Mahant* then submitted an appeal to the District Court of Faizabad, Colonel J.E.A Chamber, who after an inspection of disputed land on March 17, 1886, dismissed the appeal. He judged that a temple could not be built without inflaming communal passions. A railing was then built to separate the *chabutra* from the Masjid. This imposed a physical boundary between Hindu and Muslim religious spaces.[v] Raghubar Das, then on 25 May 1886 filed his suit in the court of the province to seek remedy for his motif, but was dismissed by the Judicial Commissioner of Oudh.[vi] The Judicial Commission said that the plaintiff's earlier suits had been dismissed, on the ground that the plaintiff had no evidence to support his claim that the place belonged to Hindus. In this way the first legal battle by the Hindus to claim the right to build a temple on the *chabutra*, ended in a fiasco. Their claim did not provide them remedy in their legal recourse.

Afterwards, in March 1934, communal riots took place over the issue of mosque. The cause of action was the slaughtering of a cow in the village, Shahjahanpur, the adjoining region of Ayodhya. The Hindus tried to ravage the mosque and damage it, but it was repaired by the funds collected through the fine imposed on Hindu rioters.[vii] In 1936, an enquiry was made from the Commissioner of Waqf Boards about the history of mosque. The Commissioner expressed in response to enquiry, that mosque was built in 1528, by Babar, the emperor and a *Sunni* Muslim. There was no noise heard or action initiated for about two decades, when another litigation concerning this mosque happened in 1945, but in it there was involvement of two sects of Muslims, *Shia* and *Sunni*. Both sects claimed the mosque. The local Civil Judge, S.A Ahsan, declared in his pronouncement on 23 March 1946, that although mosque was built by Babar who was a *Sunni*, yet there was evidence that it was used by both the sects. However,

both *Shia's* and *Sunni's* Wakf Boards litigated over its possession and no challenge to Muslims, right to offer *namaz* was thrown by the Hindus.[viii]

After partition of India, in December 1949, this controversy resurfaced and again the legal battle started. Some of Hindu people, kept the statues of *Rama*, *Sita* and *Laxman* inside the chabutra during the night of 22-23 December 1949.[ix] In the morning, they began to preach on loudspeakers about the arrival of Lord Rama and called the Hindu mob to assemble there for having a sacred look of deities for *darshan*. The incidence made the Muslims uneasy and very much disturbed and eventually led to communal confrontation. Pandit Jawahar Lal Nehru, the Prime Minister of India at that time, ordered the Chief Minister of U.P, Shri Govind Ballabh Pant to remove the referred statues. K.K Nayar, the District Magistrate, denied to take out the idols out of mosque when Sham Sunder Lal Das, Commissioner of the District, ordered him, because he asserted that removing the idols will flare up the communal riots. The court then decided to maintain the *status quo* till the finalisation of decision of ownership. The gates of disputed place were locked.[x] The Additional Magistrate of Faizabad and Ayodhya, Markendey Singh, appointed the Chairman of Municipal Board of Faizabad-Cum- Ayodhya, Priya Dutt Ram, as receiver, to arrange for case of property on dispute.[xi] Later on, a *Sanatan* Hindu, Gopal Singh Vishared, who was an inhabitant of the Ayodhya city, filed a suit on January 16, 1950 in the Civil Court. He urged entitlement of worship, and visit to the idols, installed in *Janmabhumi* and seeking a perpetual injunction, restraining the defendants from removing the idols.[xii] In this case, there were eight defendants. The Civil Judge, V.N Chadha, adjudged the matter and pronounced on 19 February, 1950:

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

The interim injunction was later on confirmed by the Civil Judge, in his judgment on 3rd March 1951, but with an important observation:

> *The undisputed fact remains that on the date of this suit, the idols of Shri Bhagwan Ram Chandra and others did exist on the site and that worship was being performed by Hindus, including the plaintiff though under some restrictions put by the executive authorities.*[xiv]

At this time, once again judiciary ignored the crucial issue of the forcible dispossession of mosque and through maintaining *status quo*, implicitly approved the illegal occupation of mosque.

Along with the suit number 2, of the year 1950, filed by Gopal Singh Visharad, three more suits were filed by other parties, regarding receivership and waqfs of site. In 1959, Nirmohi Akhara[xv] also filed a suit for ownership of the disputed land. On April 26, 1955, Allahabad High Court, confirmed the *status quo* order, issued by the Civil Judge V.N Chadha in 1950. The Muslim community also arose to seek legal help in the matter. The Sunni Waqf Board filed their suit No. 12 on 18 December 1961 in the court of Civil Judge Faizabad. A relief was sought for the delivery of mosque and graveyard in suit and removal of the Hindu idols and other articles of worship from the mosque and a decree be passed in plaintiff's favour, against the defendants Gopal Singh Visharad and others.[xvi] On behalf of Uttar Pradesh government, Deputy Commissioner of Faizabad, J.N Ugra filed a written statement on 24 April 1950, which said in paragraph 14 that, "The property in suit is known as Babri Masjid and it has been for long time in use, as a mosque for the purpose of worship of the Muslims. It has not been in use as a temple of Shri Ram Chandraji." The next para of the statement pronounced by Deputy Commissioner added that,"On the night of 22 December 1949, the idols of Shri Ram Chandra ji were surreptitiously and wrongly put inside." In the paragraph 16 it added that, "That as a result of the said wrongful act, a situation imperiling public peace and tranquility was created and public authorities had to intervene in order to prevent the breach of peace and tranquility."[xvii] The statement of J.N Ugra also did not approve the claim of Justice Deoki Nandan Aggarwal (Retd.), who was also a VHP leader, revealing that there is no evidence of Muslims offering *namaz* during *Mughal* times or during reign of the *Nawabs* of Avadh.[xviii]

From 1951 to 1986, Faizabad and Ayodhya remained calm. During this time, no legal activity was undertaken by either of the communities. During this time of 36 years, the decisions pronounced by District and High Courts, i.e. the maintenance of *status quo*, prevailed. The Hindus continued the *Akhand Kirtan* in front of mosque to 'liberate' the 'Shri Ramjanmabhumi' since 23 December 1949, without any disruption. On 25 January 1986, a young advocate Umesh Chandra Pandey, submitted a new application within the case no. 2/1950 filed by Gopal Singh Virasad and demanded that the locks which were put on 1949, be opened and the Hindus be allowed to worship the idols, lying inside it.[xix] It was queer when all

claimants or defenders of case no. 2/1950, had died and case too, was barred according to law or judiciary, when no new claimant could be entered without permission of the court, how it happened that without permission of the court, the application of Umesh Chandra Pandey, was accepted under the old case. However the judiciary refused this demand on 28 January. Umesh Chandra Pandey, then filed an appeal against the referred order, before District Judge, K.M Pandey on January 31, 1986. Even a copy of the appeal was not provided to Muslim defendants. Within a day of this appeal, February1, 1986 was fixed for the final hearing. The District Judge ordered on the same day directing the state of Uttar Pradesh, the District Magistrate and Superintendent of Police, Faizabad to open the locks and not to impose any restriction or cause hurdle in the *darshans* of applicant and other members of the Hindu community.[xx]

Quickly after the pronouncement of this statement, the gates of Babri Masjid were opened amidst the police security. The event caused a threatening communal clash as Hindus celebrated joyously while the Muslims felt deeply aggrieved. This situation proved a cause of communal fire throughout India. On 3rd February 1986, Mohammad Hashim filed a case in High Court, seeking the stay of the order of District Judge Faizabad. The court gave an order on the same day to the maintenance of *status quo* "as existing today" till the further order. The Sunni Waqf Board also put a petition on 12 May 1986, against the orders to District Judge, who had pronounced the above mentioned directions to open locks. [xxi]

The state of U.P, filed in Allahabd High Court, the plea that the two petitions filed by the Muslims should be rejected and also four civil suits be withdrawn from the court of Munsif Sadar, Faizabad which were being tried by court.[xxii] The Lucknow Bench of Allahabad High Court clubbed together all cases pending over Mandir-Masjid dispute on 14 August, 1989, and issued an interim direction to maintain *status quo* regarding the disputed property.[xxiii] The leaders of VHP promised with Home Minister, Buta Singh, that they will act upon the directions of Lucknow Bench of Allahabad High Court, given on August 14, 1989, to the effect that, "Parties to the suit shall not change the nature of property in question and ensure that the peace and communal harmony are maintained."

However, the foundation stone of Mandir was laid on November 9, 1989, quite near the Babri Masjid and *Kar Seva* began, but the *Kar Seva* was stopped the next day by the order of District Magistrate. The VHP claimed that *Shilanyas* was laid on the undisputed land. But it was done at plot no. 586, claimed by Sunni Waqf Board. The Sunni Waqf Board claimed that, this plot

has been used for long as a Muslim burial ground. On November 2, 1989 Bajrang Dal hoisted a saffron flag on the disputed plot no. 586 in clear violation of High Court's order of August 14, 1986. So all the land in Ayodhya is *Nazul* land and no *Nazul* land can be utilized for any purpose by any one without the permission of state government.[xxiv]

In this way, all legal suits related with Ayodhya were allotted by Supreme Court to Lucknow Bench of Allahbad High Court on 10th July, 1989, which had pronounced to maintain the *status quo*. Despite this legal situation, Babri Masjid was demolished on December 6, 1992. It is a point to be noted that if government wanted, the Babri Masjid could have been saved. If government could order military action in Golden Temple in 1984 where there was small gathering compared to Ayodhya why not a single gunshot was fired upon Hindus in Ayodhya. Still more noticeable is the fact that if before Supreme Court's decision (in question) security could be tight why it could not be done before demolition. It is clear that it was matter of political discrimination and biased policy.[xxv] After demolition, the then Prime Minister, Narsimha Rao, by the permission of the Parliament, vide Act 1993, took the whole piece of land of 67 acres in its possession on 7th January 1993, on the same day, the President of India vide the Parliament Act 143 (1) allotted the whole case to Supreme Court but Supreme Court again sent the case to Allahabad High Court. As according to the Indian Constitution, Supreme Court cannot put aside the decision pronounced by High Court, while providing its own decision with referred legal action on 24 October 1994, the Supreme Court restricted the construction of any kind on 67 acres of land. Moreover, it announced to maintain *status quo* till the further orders.[xxvi] The case remained pending further for six long years and in 2002 a Muslim, Aslam Bhoora, proceeded to the court, when threats were made by VHP to worship *shila* and then to *shiladaan*. The court stuck to its previous decision of 24 October 1994 and pronounced again on 13th March 2002 to maintain *status quo* about ownership of 67 acres land.[xxvii] On March 2003, Lucknow Bench of Allahabad High Court (Coram Narain, Alam and Singh, J.J) ordered Archaeological Survey of India to dig land around the Babri Masjid site. The report of Archaeology was submitted on August 2003, but this report could not help the court to find a firm resolution.[xxviii]

Beside the above mentioned civil suits, pending in the court, there are some more legal cases which are under process in various commissions and judicial agencies. These cases the outcome of incidence of sixth December 1992, when the Hindus instigated by their political

leaders, pulled down the Babri Masjid. For example, CBI dispatched a charge sheet on 13 December 1993 against 49 leaders including Lal Krishan Advani, Murli Manohar Joshi and Uma Bharati, who were blamed for conspiracy leading to the demolition of Babri Masjid. The total 50 FIR's were registered on 6 December which were directed against the politicians. Moreover, it was also the matter of defamation of Supreme Court.

It was hoped that Lucknow Bench of Allahabad High Court would finalize this story of Mandir-Masjid but it did not happen like that. On September 30, 2010 Allahabad High Court, delivered a decision and declared that disputed land be divided in three parts. The court directed that the portion below the central dome where the idols are should kept go to the Hindus, Nirmohi Akhara be allotted land including *Ram chabutra* and *Sita ki Rasoi* and one- third land be allotted to Suni Waqf Board and if minor adjustments are required, the land acquired by central government could be allotted.[xxix] No doubt, this judgment was in favour of the Hindus. The Hindus (VHP, RSS and BJP activists) were happy, but the Muslims were shocked and they felt that the verdict was against them.[xxx] The judgment was criticized by different scholars, historians, political commentators and lawyers because it was based on 'faith' not on 'facts'.[xxxi] It implied that the court finally accepted the sanctity of the idols placed in 1949, demolition of mosque in 1992, and the demolished site as a birthplace of Ram. The main slogans of Hindu zealots, *Mandir Vahi Banyenge* had been reinforced by the verdict.[xxxii]

After this, against this judgment, many parties appealed to the Supreme Court, included the Suni Waqf Board, Nirmohi Akhara, All India Hindu Maha Sabha and Bhagwan Shri Ram Virajman. On May 2011, Supreme Court stayed the verdict on Ayodhya of Allahabad High Court. Justice R.M. Lodha of the Supreme Court Bench declared that High Court verdict to be "strange". He said, "The decree of partition was not sought by the parties. How can a decree for partition be passed when none of parties had prayed for it?"[xxxiii] The Bench said that the *status quo* at the disputed site would remain as directed by the 1994 constituted Bench and order passed on March 13-14, 2002. The Bench while directing the *status quo* to continue made it clear that the existing *puja* in the make-shift Ram Lala temple at the disputed site, would go on as usual.

Now finally, Supreme Court's decision has come in favour of Mandir, which has been discussed already in this paper. Actually it was an opportunity for India to strengthen the concept of secularism but it has missed the great opportunity, to persuade all sections of India

of the justness of the path that it propounds. While attempting a balance between the law and faith, it has probably diminished the public's faith in the rule of law itself. This judgment is a step in the redefinition of our constitutional secularism. The court held that the installation of idols in 1949 violated law, demolition of Masjid in 1992 was illegal but court was determining ownership in spite of both acts which were outside the framework of law. Definitely in this case rule of law has been defeated, majoritarianism and faith of one religion has prevailed.

Conclusively, it is said, in this whole crucial issue, judiciary played a rather passive role. The legal battle fought in the court in this case is a typical example of delay, harassment and dilatory tactics. The judiciary as well as government has utterly failed to solve the controversy in a positive or satisfactory way. In the initial stage of legal battle during British judiciary was forthright on this dispute. In later stage after independence judiciary has been uncleared because it wanted to maintain status quo again and again. But in last stage, judiciary has taken queer view far from the expectations of building a network of trust. It can be said after whole analysis of history of legal battle that when Hindu community was going step by step near their target like constructing *chabutra*, installing idols, opening the locks, demolition etc., after every step judiciary was pronouncing to maintain status quo and in the last, judiciary justified what others considered factually illegal.

Actually the battle for Ramjanmabhumi is part of a wider political for constitution of Hindu consciousness and identity, for construction of a unified Hindu tradition and for assertion of Hindu power over all other communities.[xxxiv] Twenty seven years have passed since the demolition of Babri Masjid. Undoubtedly, it was a major event, which seriously denied our commitment to secularism. It has not only created crisis of Indian Muslims identity, but also hurt the image of tolerant Hinduism throughout the world.

ENDNOTES

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[vii] Koenroad Elst, ***Ramjanmbhumi vs. Babri Masjid: A Case Study in Hindu Muslim Conflict,*** New Delhi: Voice of India, 1990, p.143.

[viii] S.K. Tripathi, "One Hundred Years of Litigation", in Asghar Ali Engineer (ed.), ***Babri Masjid-Ramjanamabhumi Controversy***, Delhi: Ajanta Publications, 1990,p.213. p.20.

[ix] Ibid.

[x] Engineer (ed.), n.8, pp.8-9.

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[xii] Ibid.

[xiii] Koenroad Elst, ***Ramjanmbhumi vs. Babri Masjid: A Case Study in Hindu Muslim Conflict,*** New Delhi: Voice of India, 1990, p.146.

[xiv] Mishra, n.4, p.32.

[xv] Avtar Singh Yadav, ***Ayodhya: Itihas, Dharam Aur Rajniti,*** Lucknow: Shobha Publications, 1991, p.17.

[xvi] Jafaryab Jeelani, "A Glimpse of Judicial Process on Babri Masjid", ***Radiance*** , 25 November- 1 December 1990, p.6.

[xvii] Noorani, n.6, pp.76-77.

[xviii] Pradeep Nayak***, The Politics of the Ayodhya Dispute: Rise of Communalism and Future Voting Behaviour***, New Delhi: Common Wealth Publication, 1993,p.47.

[xix] Ibid, p.48.

[xx] Umesh Chandra Pandey vs. State U.P and 30 others, ***Civil Appeal No. 6 of 1986*** dated 1 February 1986.

[xxi] Harish Sharma, ***Communal Angle in Indian Politics***, Jaipur: Rawat Publications, 2000, p.106.

[xxii] Noorani, n.6, p.79.

[xxiii] Sharma, n. 21, p.120.

[xxiv] Mishra, n.4. pp.34-35.

[xxv] ***Hindustan Times,*** 9 November 2019, p.10.

[xxvi] Brijgopal Rai Chanchal, ***Mandir Vahin Banyenge, Magar Kyo?,*** New Delhi: Diamond Pocket Books Pvt, 2002, p.47.

[xxvii] Ibid.

[xxviii] C.R. Irani, ***Ayodhya: Demolishing A Dream,*** Kolkata: UBSPD Publications, 2004, p-194.

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